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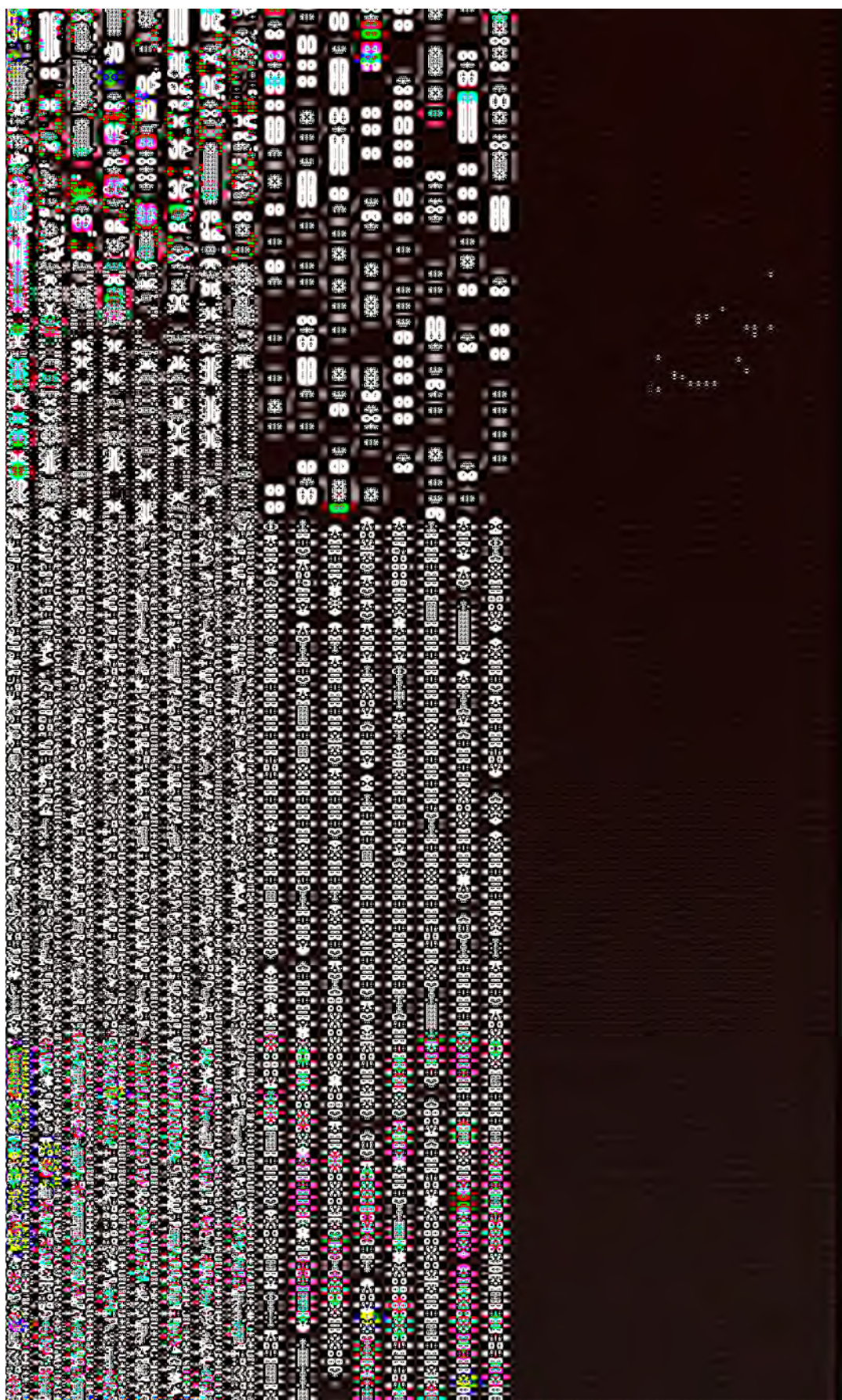
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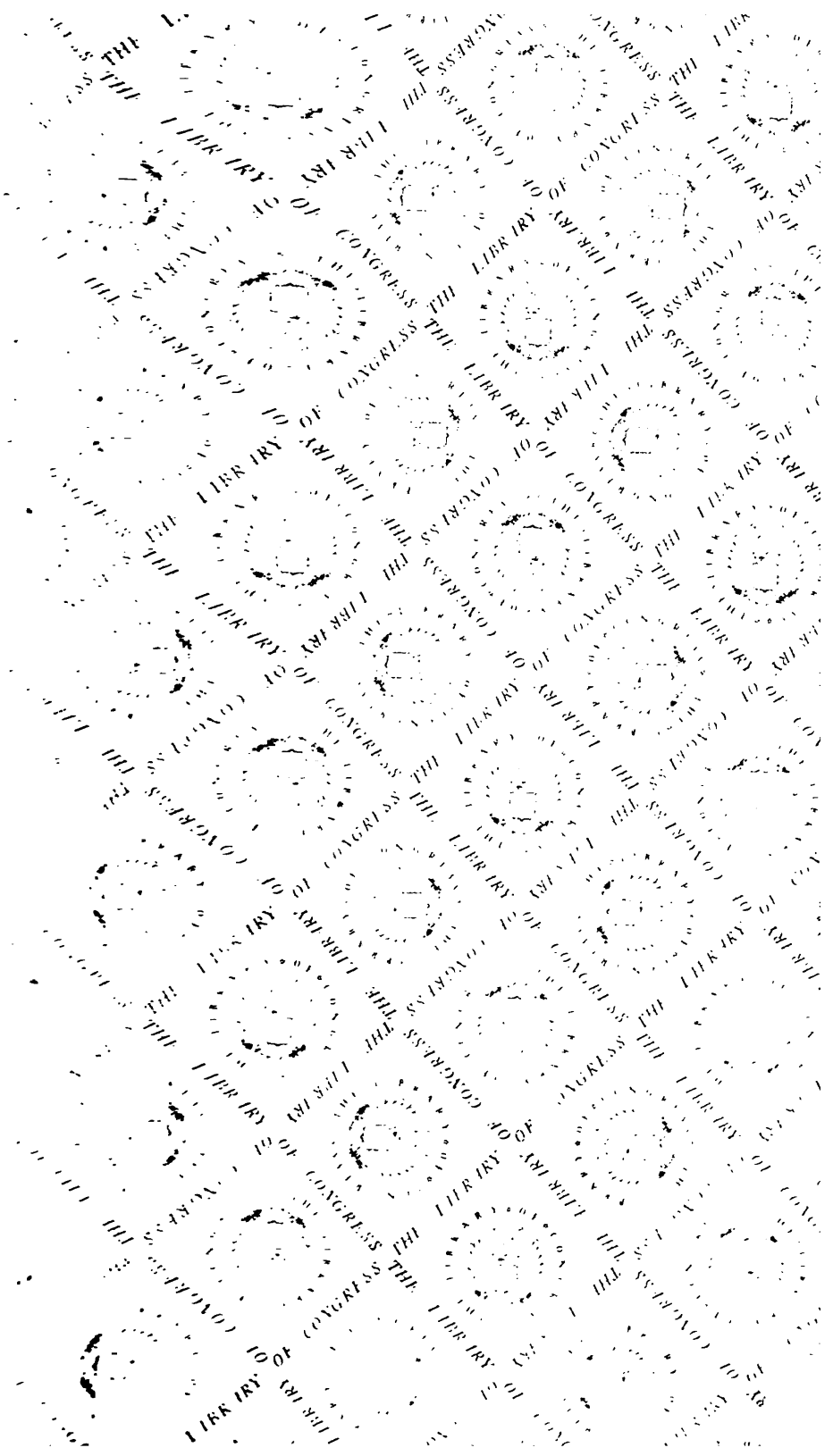
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HEARINGS

BEFORE THE

House

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

BILLS TO AMEND THE INTERSTATE-COMMERCE ACT.

HOUSE REPORT 4093,
AMENDING THE INTERSTATE-COMMERCE ACT.
THE ANTITRUST ACT
AND ACTS SUPPLEMENTARY THERETO.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1905.

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HEARINGS
BEFORE THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE
HOUSE OF REPRESENTATIVES,
ON
H. R. 10431, 6273, 6768, 7640, 10008, 11434, 11594,
12767, 13778, 15600, 16301,
TO AMEND THE INTERSTATE-COMMERCE LAW.

HEARINGS BEFORE THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES ON THE PROPOSED ENLARGEMENT OF THE POWERS OF THE INTERSTATE COMMERCE COMMISSION.

FRIDAY, December 9, 1904.

The committee met at 11 o'clock a. m., Hon. W. P. Hepburn in the chair.

STATEMENT OF MR. E. P. BACON.

Mr. BACON. Mr. Chairman and gentlemen of the committee—
The CHAIRMAN. Mr. Bacon.

Mr. BACON. I appear before you in behalf of the commercial organizations of the country representing various branches of trade and of industry, to the number of 424, of the committee representing which I have the honor to be chairman, for the purpose of urging that the legislation which has been before Congress for so long a time, the amendment of the interstate-commerce act for the purpose of giving it effectiveness by enlarging the powers of the Interstate Commerce Commission, be expedited to the utmost possible extent. The legislation has now been before Congress for five years, having first come through the bill known as the Cullom bill, which was introduced in December, 1899, and failed of passage. That was a Senate bill and was reported to the Senate adversely by a majority of 1, and failed of action in that Congress. In the next Congress the committee which I represent secured the introduction of a modified bill.

I will say in the first place that this committee advocated the passage of the Cullom bill during that Congress, but in the next session a modified bill was presented, in view of the fact that a number of the provisions of the Cullom bill were seriously objected to by one and another.

The CHAIRMAN. Let me interrupt you. The bill that you referred to as the Cullom bill was the one that contained the provision authorizing pooling?

Mr. BACON. That did not contain any provision authorizing pooling. I will come, very shortly, to the bill that did contain that. The bill that succeeded that, which was advocated by this committee, was known as the Nelson-Corliss bill, and it contained less than half of the provisions previously contained.

Mr. RICHARDSON. The Nelson-Corliss bill?

Mr. BACON. The Nelson-Corliss bill, introduced in the Senate by Senator Nelson and by Mr. Corliss in the House, he being a member of this committee at that time. That contained less than half of the provisions contained in the other. At the same time the Elkins bill was

introduced in the Senate. That was in 1901, the first session of the Fifty-seventh Congress, that bill having been prepared directly and drawn personally by the general counsel of the Pennsylvania Railroad, Mr. Logan, who is now dead. That bill, together with the Nelson-Corliss bill, was before the Senate at the same time, and a duplicate of that bill was subsequently introduced in the House in the latter part of the same session of Congress. That bill contained a pooling clause, and it was before the Senate during that Congress, and the final result was that simply one section of that bill was reported, with some modification, which was passed, and which is known as the Elkins act, which provided extreme penalties for the violation of the prohibitions of the interstate-commerce act against individual discriminations.

Mr. ESCH. What kind of discriminations?

Mr. BACON. Individual discriminations—discriminations between individuals and corporations. But it had no bearing whatever upon discriminations between localities or between different descriptions of traffic. That portion of the bill was passed and has been productive of immense good. It has been surprising, in fact, to me to what an extent that bill has been complied with by the transportation companies, and in fact our committee has been unable to trace any violation of that bill of any consequence. There have been some devices for defeating it by the establishment of side tracks, which are called railroads, so that on a division with the railroads they get an undue proportion, and by that means obtaining personal discriminations, personal favors, and personal advantages. But the Commission, after hearing some cases in that direction, have already taken steps to prevent that evasion of the law.

In the present Congress, the first session of the present Congress, our committee secured the introduction of a bill based upon the Elkins bill. The Elkins bill, I will say, in addition to having been framed by the general counsel of the Pennsylvania Railroad, was amended at the suggestion of our committee by the counsel and the amendment approved by President Cassatt, and our committee then adopted it as a substitute for the Nelson-Corliss bill and joined with the railways to secure its passage. But on the failure of that bill our committee in the next Congress—that is, the first session of the present Congress—secured the introduction of what is known as the Quarles-Cooper bill. It is simply a redraft of the revised Elkins bill, revised as I have described, and eliminating the pooling section. That bill contains a pooling section, drawn with great care, putting all rates fixed by pools or the Traffic Association under the direct supervision of the Interstate Commerce Commission. But the commercial organizations of the country almost unanimously disapproved of pooling. Very few of them favored it and others favored the establishment of traffic associations without, however, the pooling provision. But a great majority, probably nine-tenths—more than that, in fact—are opposed to pooling, and are opposed to the application of pooling in any form, even in the form of traffic associations. Consequently that was considered in redrawing the bill and presenting it in its present form.

That is one of the bills now before this committee. Extensive hearings were held on the Nelson-Corliss bill in April, 1902, this committee devoting some two or three months to its consideration, the commercial organization side of it having been presented in about three weeks, during the month of April, and hearings held open for nearly

two months for the railway side to present their views in relation to it. The best talent, probably, of the railway systems of the country appeared before this committee and presented their objections to the bill, through Mr. Hines, counsel for the Louisville and Nashville Railroad; Mr. Grover, counsel for the Great Northern; Mr. Blythe, counsel for the Chicago, Burlington and Quincy, and Mr. Bird, who was vice president and traffic manager of the Chicago, Milwaukee and St. Paul Railway, and appeared in behalf of the Northwestern roads in general. So that the subject appears to have been exhaustively presented before the committee on both sides.

The committee which I represent does not desire to present anything further in the case on its side but desires, on the other hand, that the bill be expedited to the utmost possible extent and holds that any further hearings, in its judgment, are wholly unnecessary on either side. However, we do not assume to dictate to the committee as to whether they are satisfied with the hearings or not. But so far as we are concerned we waive any claim to further hearings and desire to aid in every way in expediting the legislation. We feel that the subject has been so long before Congress and we have expended so much time in the advocacy of it and in the solution of the question, before Congress and before the committees of Congress and before the public, that it is time we reached some definite result; either that the matter should be disposed of by dropping it or that it be pushed to a successful issue. That is all, gentlemen, that I wish to offer this morning.

Mr. CUSHMAN. What is the name of this organization that you represent?

Mr. BACON. It is the interstate-commerce law convention.

Mr. CUSHMAN. When was it organized?

Mr. BACON. The first convention was held in November, 1900, and a second convention in last October. The first convention appointed an executive committee, of which I had the honor to be chairman, and that committee proceeded under the general instructions of that convention during the interval between that and the second convention, a period of nearly four years, and at the second convention the executive committee that had previously represented the organization was reappointed, with the exception of some of the members, who were excused or were dropped, and some new members appointed.

Mr. CUSHMAN. Will you state, in a general way, what the general purposes of the organization are?

Mr. BACON. The sole purposes of the organization—it is hardly proper to call it an organization, because it was merely a convention of representatives or delegates from the various commercial organizations of the country. The first one held at St. Louis in November, 1900, consisted of delegates from only 41 commercial organizations.

Mr. CUSHMAN. What are the purposes of the organization, primarily, that you represent?

Mr. BACON. The purposes of the commercial organizations or of this interstate-commerce law organization.

Mr. CUSHMAN. The purposes of the convention.

Mr. BACON. The purpose of that convention was to secure the amendment of the interstate commerce act for the purpose of giving it greater effectiveness, by means of enlarging the powers of the Interstate Commerce Commission.

Mr. CUSHMAN. How many conventions have you held?

Mr. BACON. Only two conventions; one in 1900 and one in 1904.

Mr. CUSHMAN. How many attended the first convention?

Mr. BACON. I think the number present at the first convention was about seventy, representing about forty or forty-one commercial organizations.

Mr. CUSHMAN. And how many were present at the second convention?

Mr. BACON. At the second convention there were present 306, representing 170 commercial organizations. In the meantime, there has been correspondence going on on the part of this committee, which was appointed by the first convention, with all the various commercial organizations of the country, presenting the matter for their consideration, and one after another has joined in the movement by the passage of resolutions favoring the proposed legislation and urging their representatives in Congress to advocate it.

Mr. CUSHMAN. Now, does the work of your convention, or your delegates, your organization, consist chiefly in presenting the views of commercial organizations that are sent to you?

Mr. BACON. That is it, exactly; yes, sir. The commercial organizations act through this committee.

Mr. CUSHMAN. Is a part of the work of your committee to help create sentiment in favor of this legislation?

Mr. BACON. It might, perhaps, be so regarded. The effort has been to ascertain the sentiment of commercial organizations, and to suggest that such of them as favored this legislation join in the effort to promote it.

Mr. CUSHMAN. I receive a good deal of literature in my mail, from various organizations—-independent organizations—which seems to have emanated from one source. It does not seem to be always an independent expression of the views of the different people, but the signatures seem to be affixed to something that has been presented to them for signature.

Mr. BACON. This committee has not issued anything of that character. It has suggested to the commercial organizations with which it has had correspondence that if they desire this legislation they should take the matter up in their own way with their respective Representatives in Congress, and that has been done to a very large extent.

Mr. CUSHMAN. You are aware, are you not, that there are a number of new members on this committee who have never been present when this subject has been on for hearing before this committee?

Mr. BACON. I am aware of that; yes, sir. I understand that there are seven new members.

Mr. ESCH. Does this organization represent all parts of the country, geographically speaking?

Mr. BACON. They represent every part of the country. They represent organizations located in 44 different States and Territories, covering all branches of trade. There is not any one branch that seems to be any more interested in it than another. It originated with the milling interests six years ago, through the National Millers' Association, and it was followed in the first place by a convention that was held at Chicago in 1899 by representatives of national commercial organizations who indorsed the Cullom bill and recommended its passage to Congress, and that convention was followed by the first interstate commerce law convention in the following year.

Mr. ESCH. Are these constituent bodies confined to shippers and manufacturers, or have you also bodies which represent consumers and the consuming class, which ultimately pay the tax?

Mr. BACON. These organizations represent either mercantile bodies or manufacturing bodies, these bodies representing manufacturing organizations, but at the same time the State granges of several of the States have taken independent action in relation to it, and have added their influence in the effort to secure the legislation; but our organization represents solely the commercial interests—mercantile manufacturing interests.

Mr. RICHARDSON. Have you not also brought under your organization a number of what are commonly known as chambers of commerce?

Mr. BACON. Yes, sir; those are classified among commercial organizations.

Mr. RICHARDSON. And they represent farmers and merchants, and so you have all those kinds of men as members?

Mr. BACON. They generally represent only business men. In some instances the chambers of commerce do represent professional men.

Mr. RICHARDSON. They are from mercantile bodies, but they represent not only merchants, but they bring all classes of people together.

Mr. BACON. To some extent; but they consist principally of merchants and manufacturers. The State grangers' association, the Patrons of Husbandry, you understand, of course, is a purely agricultural organization representing farmers. They constitute a membership, I am informed, of about 500,000, and they have for years, from year to year, taken action urging this legislation.

Mr. RICHARDSON. You do not pretend to say that all those other classes of people are not as much interested in the question of unjust freights?

Mr. BACON. I do not say they are not just as much interested. In fact, I believe the consumers are more interested than any other class of people. And producers, also. They are directly affected by the rate of freight on their products from the points of production. The consumers, of course, are interested in all that they consume, and, in fact, commercial organizations are only indirectly interested, because what they pay in freight is passed over immediately in the price of their goods to those who use the goods, or, in the case of agricultural products, is taken right out of the price of the product which the farmer offers for sale.

Mr. CUSHMAN. I recently received in my mail a communication setting forth that some number of people and institutions, 12 or 13, I believe, who have heretofore approved of this legislation, now withdrew from your organization and wished their names to be stricken off of the petition. Do you know anything about that?

Mr. BACON. There is only one case that has come to my knowledge, and I think if there were others they would have come to my knowledge. That was in reference to a purely private organization, and not in relation to a commercial organization at all. A publishing organization in New York was engaged in publishing a journal entitled "Freight," a monthly journal. In obtaining subscriptions to their journal they used the name of the Merchants' Association of New York as having indorsed this legislation, as was the case. They were among the first who advocated the legislation, and among the most active. The officers of the association objected to that private organization using its name in their solicitation of

subscriptions, and very properly; and the directors of that organization, at the solicitation of the president of one of the railways terminating in New York, wrote to this publishing company, who, in connection with obtaining subscriptions for their paper, also circulated a petition on their own account, and without the knowledge of our organization, for this legislation, which they sent around the country together with their paper for signatures. These merchants in New York, who had been appealed to by the president of this railway, requested the publishers of this paper to withdraw their signatures from the petition they had signed. That petition had no connection with this association or this movement. It was a purely private matter, and that effort was undoubtedly made for the purpose of promoting their private enterprise.

Mr. CUSHMAN. Are you engaged actively in any kind of business at this time that does large shipping?

Mr. BACON. I am engaged in the grain business, as I have been for forty years, in the city of Milwaukee, in the receiving of grain on commission. I am not a shipper. I receive grain on consignment and sell it for the shippers, returning to them the proceeds, of course. But in the payment of freight charges on that business, the great injustice of freight charges attracted my attention, and naturally, for my interest, with those with whom I was doing business, I took up the subject, endeavoring, so far as I might be able to do so, to produce a rectification of these difficulties and injuries.

Mr. BURKE. Who issued the call for the first convention, held in 1900?

Mr. BACON. The call for that convention was issued by the executive committee of the previous convention that I spoke of, which was held in 1899, of the national commercial organizations of the country, which was termed "The League of National Associations." I was chairman of the executive committee of that organization.

Mr. BURKE. That was in 1900?

Mr. BACON. That was in 1899.

Mr. BURKE. In 1899. And that convention was held on call issued by you?

Mr. BACON. That convention was held upon call issued by the National Millers' Association. The National Millers' Association had been at work for a year or two endeavoring to secure legislation, owing to the discrimination between rates on wheat and flour.

Mr. BURKE. What connection had you with that association?

Mr. BACON. I had no connection with that association; but after working for a year or two alone to accomplish it, they deemed it best to secure the assistance, if possible, of other national organizations, theirs being also a national organization. So they called a convention at Chicago, which was held in November, 1899, at which the Cullom bill was taken under consideration, before its introduction, and was indorsed by that convention; and it appointed an executive committee, of which I was made chairman, to press the legislation. And Mr. Barry, who is here at my side, was the secretary of that convention. He was previously secretary of the National Millers' Association, and this convention held in Chicago in 1899 was followed by the convention held in St. Louis in 1900, and that convention was called by the executive committee of the previous organization; that is, the League of

National Associations, and that association went out of existence when this first St. Louis convention was held; that is, it was superseded.

The St. Louis convention comprised local and State organizations as well as national, which it was deemed necessary to take in for the purpose of making this demand for legislation more general.

Mr. BURKE. Have you ever had any connection yourself with any railway company, in any capacity; and if so, when?

Mr. BACON. Yes, sir. The first fourteen years of my business life was spent in railroad service.

Mr. CUSHMAN. How many years?

Mr. BACON. Fourteen years. I commenced my business career very early. At 17 I obtained a position in a railway office, and remained in the railway service for fourteen years, and then went into business for myself. During that railway service I occupied various positions. During the last nine years of that service I was in the positions, successively, of general freight agent, auditor, and general ticket agent of what was then the Milwaukee and Prairie du Chien Railway, now a part of the Chicago, Milwaukee and St. Paul, and it was probably through that experience that I became interested in these matters. I also took some part in securing the passage of the present interstate commerce act, arising from that interest. I was appointed one of the committee of the National Board of Trade to promote the passage of that act.

Mr. BURKE. When was the Elkins bill enacted? When did it become a law?

Mr. BACON. In February, 1903.

Mr. BURKE. Do I understand you to say that that bill was prepared by the general counsel of the Pennsylvania road?

Mr. BACON. Yes, sir.

Mr. BURKE. And subsequently was amended by some provisions that your committee desired in the bill?

Mr. BACON. Amended by the counsel of the Pennsylvania Railroad at the request of our committee.

Mr. BURKE. And it had your sanction when so amended?

Mr. BACON. Yes, sir.

Mr. BURKE. And it passed in that form?

Mr. BACON. It did not pass in that form. As I remarked a while ago, the only portion of the bill that was passed was the portion prescribing severe penalties for the violation of the provision against individual discriminations, which, as I remarked, has been very effective.

Mr. BURKE. But the amendments suggested by you were not in the bill when it became a law, or those to which you subscribed?

Mr. BACON. No, sir.

Mr. MANN. The original Elkins bill?

Mr. BACON. The original Elkins bill was a comprehensive one, but only one portion of that bill was reported and was enacted.

Mr. RICHARDSON. Relating to what?

Mr. BACON. Personal discriminations.

Mr. RICHARDSON. Was that an original provision?

Mr. BACON. Yes, sir.

Mr. LAMAR. What penalty did it impose?

Mr. BACON. A penalty of \$5,000 fine for each violation.

Mr. LAMAR. That was applied to the corporation and not to the agent in the depot?

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Mr. BACON. It was applied to the corporation.

Mr. ADAMSON. That provision was simply taken up and put on as a rider to a bill that went through?

Mr. MANN. No; that was a separate bill. That was a matter that you had been agitating for years, and had been in all the former bills before this committee.

Mr. BACON. It was.

Mr. MANN. And was it a matter that the general counsel of the Pennsylvania Railroad then put in that bill?

Mr. BACON. It was a part of that bill.

Mr. MANN. We had had discussions about that before that Congress convened. It was in all these bills that had been before us, practically all the same thing.

Mr. ADAMSON. Before you arrived at that Senator Elkins did just bring in a separate provision, and it went through?

Mr. BACON. It prescribed the penalty of \$5,000 for the company for each violation of the law, and it inflicted the penalty, which by the interstate-commerce act was put upon the individuals, upon the companies, which had the effect of opening their mouths and making it possible to obtain convictions under the law.

Mr. RICHARDSON. Have you heard of any proceedings against the railroads in the matter of rebates?

Mr. BACON. I have not heard of any occasion for proceedings. It has been so generally observed by the railways since its passage that there has been no occasion for prosecution.

Mr. RICHARDSON. Railways are not opposed to stopping the rebates?

Mr. BACON. Not by any means. It is quite as much to their advantage to stop them as to that of the public.

Mr. BURKE. How much time was consumed in the hearings on this bill in the Fifty-seventh Congress?

Mr. BACON. The hearings were commenced on the 8th of April and were concluded on the 17th of June, a period of over two months.

Mr. BURKE. Now, as I understand, you waive any further hearing?

Mr. BACON. Any further presentation of our side.

Mr. BURKE. And you expect those who are now on this committee to familiarize themselves with the subject by referring to the reports of those hearings?

Mr. BACON. They certainly have opportunity of doing that. We wish, however, in case of any additional arguments being presented by the railway side, to have an opportunity for rebuttal. That will be all we will ask for.

In referring to my having had some part in the passage of the original interstate-commerce act, I was going to add that that is what led me to give a good deal of study to this matter, and to read up the cases and to keep close observation on the results of the operation of the act, and also on the court proceedings in cases of appeals.

The CHAIRMAN. Were you at that time in favor of the legislation that was enacted, or were you in favor of the other series of propositions that were contained in what was known as the Reagan bill?

Mr. BACON. I favored the interstate-commerce act as it was finally reported and passed.

The CHAIRMAN. Now, did you ever hear, during all of that contention, or in any of the speeches that were ever made in Congress, any claim made that that gave to the Interstate Commerce Commission the

power to fix a rate, and is there to your knowledge anywhere in the debates or anywhere else a sentence that seems to maintain that position?

Mr. BACON. Mr. Chairman, the fact that the Supreme Court has decided that question it seems to me renders it wholly irrelevant.

The CHAIRMAN. No, it does not because it is claimed by many people, and I think by you, that the power has been taken away from the Commission by the Supreme Court. What I want to get at now is this: Did you ever hear, can you produce a sentence, from anyone participating in any of those debates that seems to indicate that they believed that the power was given at that time to fix rates?

Mr. BACON. The time has passed so long that I do not recall at the present moment.

The CHAIRMAN. Did you believe at that time that the power was given?

Mr. BACON. The question at the time of the passage of the act did not enter my mind.

The CHAIRMAN. No. You never thought of it, did you?

Mr. BACON. I simply took observation of it as the Commission acted in pursuance of the law, that it did convey the power of changing rates.

The CHAIRMAN. In any other way than the way of recommendations?

Mr. BACON. Yes, sir; in the way of positive orders; and those orders were recognized and acquiesced in by the railroads.

The CHAIRMAN. In how many instances?

Mr. BACON. Well, I can recollect. [After a pause.] I would be pleased to go into that later. Mr. Cooper is here, and I know he would like to say a few words to you about the bill.

The CHAIRMAN. One other question that I want to ask you. You say that you are engaged in creating public sentiment in favor of this bill. How do you do that?

Mr. BACON. I do not say that.

The CHAIRMAN. You did say that, I think.

Mr. BACON. I do not think I used the word "create." I said that my effort had been simply to ascertain the extent of the prevailing public sentiment and to develop it.

The CHAIRMAN. As a matter of fact, you and your collaborators, you and Mr. Barry particularly, do attempt to create public sentiment in favor of this matter?

Mr. BACON. That has not been the intention of our committee at all. It has simply been—

The CHAIRMAN. You do go to the extent of denunciation of members of Congress who you think do not favor it, also?

Mr. BACON. Our committee has never done anything of the kind, or anything that could be so construed.

The CHAIRMAN. Has not anyone else?

Mr. BACON. No, sir; not that I know of.

The CHAIRMAN. Has not your friend, Mr. Barry?

Mr. BACON. Not during his employment by us. Not when he was engaged by the committee.

The CHAIRMAN. Has he not during the last summer, to your knowledge?

Mr. BACON. He has not been employed by the committee during the last summer. With the close of the last Congress we had no need of

his services. Just before the opening of this session we reengaged him. In the meantime he has been in the employ of one or two organization, which have been seeking the same legislation; the Interstate Cattle Growers' Association, for one.

The CHAIRMAN. How many salaried officers are there in connection with this—

Mr. BACON. With this movement?

The CHAIRMAN. With this movement.

Mr. BACON. No one but Mr. Barry, who is employed as secretary.

The CHAIRMAN. What is his salary?

Mr. BACON. His salary while employed by the committee has been \$250 a month.

The CHAIRMAN. And his expenses?

Mr. BACON. His expenses in traveling?

The CHAIRMAN. Was there not a fund raised at your last meeting for the purpose of agitating this question?

Mr. BACON. For the purpose of publishing matter relating to it, and enlightening the public as to the progress in it and as to the purpose of it.

The CHAIRMAN. And there is no compensation paid in any way to any person save Mr. Barry?

Mr. BACON. Not a dollar in any way, shape, or manner. On the contrary, the members of the committee have gone to a good deal of individual expense on their own account. The members of the committee are scattered in various parts of the country, and each one is exerting his influence, of course, in his particular section of the country.

The CHAIRMAN. To what extent, to your knowledge, does the Interstate Commerce Commission or any of its officers aid in the dissemination of your literature?

Mr. BACON. To no extent whatever. We have no connection with the Commission in any way, shape, or manner.

The CHAIRMAN. None of its officers?

Mr. BACON. None of its officers?

The CHAIRMAN. Yes.

Mr. BACON. Except occasionally we have consulted with them as to the desirability of certain provisions of the bill.

The CHAIRMAN. To what extent does your committee, or do members of your committee, use the offices and the employees of the Interstate Commerce Commission in the dissemination of your literature or for your other purposes?

Mr. BACON. In no way whatever, sir. [Retiring in favor of Mr. Cooper.]

The CHAIRMAN. I would like to pursue this matter a little further. We can hear Mr. Cooper at a later period. Have you considered the provisions of this bill, which is pending, in their relation to all of the public interests, in your judgment?

Mr. BACON. We have certainly sought to do so.

The CHAIRMAN. You have sought to do so?

Mr. BACON. Yes, sir.

The CHAIRMAN. Have you considered it in the relation that it bears, or is claimed to bear, to a disturbance of the powers between the three coordinate branches of the Government?

Mr. BACON. We have had no occasion, that I am aware of, to go into the constitutional question. I do not know that the question of the constitutionality of this bill has been raised by any of the opponents of the bill. The several distinguished railway attorneys who appeared before the committee offered no suggestion to that effect, so far as I—I am sure they did not. I was going to say that so far as I observed, they did not; but I have read their testimony over and over very carefully, and I am sure that they did not. Hence I did not think it necessary to deal with it.

The CHAIRMAN. The bill you advocate proposes to confer legislative power upon an executive branch of the Government, does it not?

Mr. BACON. It proposes to confer a delegated legislative power upon the Interstate Commerce Commission.

The CHAIRMAN. You understand that to be a part of the executive branch of the Government, do you not?

Mr. BACON. I hardly regard it as such, Mr. Chairman. The members of the Commission are appointed by the President, individually; but he has no control over them; no direct control—is not connected with any department of the Government.

The CHAIRMAN. Its duties are solely executive at the present time, are they not?

Mr. BACON. It hardly seems so to me.

The CHAIRMAN. It does not?

Mr. BACON. It seems to me that they are, perhaps, probably, of an administrative character. Whether that would properly be termed executive or not I can not say.

The CHAIRMAN. Have you entered into the question of whether or not there is any power of review by any court of any act of the Commission, that it might perform through this grant of power to fix rates?

Mr. BACON. The bill specifically provides for a review by the circuit court upon application of the carrier?

The CHAIRMAN. But for what purpose? What question would the court review? You are familiar with all this subject, I take it; you have been six years constantly engaged on it.

Mr. BACON. The bill specifically states that the court shall review it with respect to its lawfulness.

The CHAIRMAN. With respect to the lawfulness of the rate?

Mr. BACON. With respect to the lawfulness of the order. It says that their orders shall be subject to the review of the court as to their lawfulness, reasonableness, and justice.

The CHAIRMAN. That would involve the question as to whether their rate was a reasonable rate.

Mr. BACON. That would be, I think, for the court to determine.

The CHAIRMAN. Have not the Supreme Court of the United States specifically refused to pass upon any question of the reasonableness of rates?

Mr. BACON. The Supreme Court has decided that it has no power to pass upon rates to be adopted in the future.

The CHAIRMAN. Have they not decided further, have not the Supreme Court held, that the only question in connection with rates that they can pass upon is as to whether or not a given rate is an act of confiscation, and that they have nothing to do with whether a rate is reasonable or not?

Mr. BACON. I have not so understood the rulings of the court.

The CHAIRMAN. You have not?

Mr. BACON. But the Federal courts have, as you know, at various times passed upon that very point, as to whether the proposed rate, or a rate proposed by a State railway commission, was confiscatory in its effect, or would be confiscatory in its effect.

The CHAIRMAN. Yes.

Mr. BACON. They overruled the orders of the State commissioners on the ground that they were of that nature.

The CHAIRMAN. Yes; that they were confiscatory?

Mr. BACON. Yes, sir.

The CHAIRMAN. But have they not refused to pass upon any other question than that of whether the rate was confiscatory? Deciding as to the mere reasonableness or justice of a rate they hold to be a legislative act, and outside of the jurisdiction of the court, do they not?

Mr. BACON. They hold that a rate for the future is outside of the jurisdiction of the court; that it can not pass upon a rate for the future.

The CHAIRMAN. That is your understanding of the matter?

Mr. BACON. That is my understanding.

The CHAIRMAN. And your advocacy of this bill is based upon that idea, that the court has the power to pass upon a question of the reasonableness of rates?

Mr. BACON. No; I could not say that it was based upon that; it is based upon the necessity, which is manifest, that some tribunal should decide between the public and the companies in cases of dispute as to the reasonableness of rates.

The CHAIRMAN. You would still advocate the passage of this bill, even if you knew that the courts would not pass upon the action of the commission in the fixing of a rate?

Mr. BACON. I do not go as far as that, Mr. Chairman. I feel, or at least I have thought, that those were matters for the court to determine for itself.

The CHAIRMAN. But suppose they should so hold, would you still be in favor of the bill?

Mr. BACON. The court has held that the Commission in this case, in ordering changes in rates, has gone beyond the power conferred by the present act. Now, if we confer the power for them to make such changes by the present act, and the court decides that that is unconstitutional, we would have to abide by the result; but we would like to have the opportunity to see—

The CHAIRMAN. Have you discussed those questions?

Mr. BACON. I have not discussed the legal questions themselves very much.

The CHAIRMAN. Have any of those questions been presented to this committee by anybody?

Mr. BACON. The constitutional questions I do not think have been specially presented to the committee. We have presented the requirements of the situation, so far as the commercial organizations are concerned.

The CHAIRMAN. For relief?

Mr. BACON. For relief.

The CHAIRMAN. But you have not considered nor presented the legal aspects of the remedy?

Mr. BACON. We do not seem to have had any occasion to do that, for the reason that the railway opponents of the bill have not suggested any such necessity. I will say, however, that in the testimony presented by the commercial organizations, several of the members—four of the members—of the Interstate Commerce Commission, did go into the question of the legality of this proposition, each for himself. And also Mr. Kernan, of New York, the distinguished lawyer who was four years chairman of the State railway commission of New York, went into it quite thoroughly before this committee.

The CHAIRMAN. You remember that Mr. Prouty stated to this committee that he did not know whether or not this bill was a wise one, do you not?

Mr. BACON. At one time he said that he had not given it sufficient study to determine.

The CHAIRMAN. That was at the time he appeared before this committee, was it not?

Mr. BACON. I could not say specifically, in regard to that; but I know that Judge Prouty, in his testimony, did advocate the bill very strongly, and he has since expressed his approval of it, as have also the other members of the Commission.

The CHAIRMAN. That is all I care to ask for the present.

Thereupon the committee adjourned until Tuesday, December 13, 1904, at 10.30 o'clock a. m.

TUESDAY, *December 13, 1904.*

STATEMENT OF MR. E. P. BACON—Continued.

The CHAIRMAN. Mr. Bacon, are you ready to proceed?

Mr. BACON. Yes, sir; I am ready to answer any questions that may be asked of me.

The CHAIRMAN. Did you intend, by an answer that you made the other day, to say that the Interstate Commerce Commission had not taken an active part in the advocacy of your proposition to give them the power to establish railway rates?

Mr. BACON. So far as the organization which I represent is concerned, they have not.

The CHAIRMAN. Has there been at any time an effort on the part of you or your organization to procure that result?

Mr. BACON. Not in the least; no, sir.

The CHAIRMAN. Were you cognizant of it at the time that the railway commission did, in a former meeting, instruct their secretary to prepare and send abroad a letter advocating, as the views of the commission, this increase of power or grant of power?

Mr. BACON. That I have no knowledge of.

The CHAIRMAN. You have no knowledge of it?

Mr. BACON. I know it is not in connection with this organization which, as you understand, was formed in 1900.

The CHAIRMAN. Well, your organization was formed in 1900?

Mr. BACON. Yes, sir; November, 1900.

The CHAIRMAN. But there was another meeting in the year before, out of which it was in part formed, was there not?

Mr. BACON. It succeeded the organization known as the League of National Associations.

The CHAIRMAN. When you speak of your organization, do you exclude the prior organization?

Mr. BACON. I speak only for the present organization.

The CHAIRMAN. Did you have no knowledge of the transactions of the other?

Mr. BACON. I did have some partial knowledge.

The CHAIRMAN. You did have?

Mr. BACON. Yes, sir.

The CHAIRMAN. Did you know, or was it through your advice or procurement, that on the 8th day of December, 1899, the Interstate Commerce Commission made the following order:

Cooperation with certain mercantile organizations to secure the adoption of an amendment to the act to regulate commerce being under consideration, it was unanimously voted to instruct the secretary to cooperate with the representatives of these organizations for the purpose of securing the adoption of necessary amendments, and particularly the passage of a bill which has been approved by such organizations at a meeting held in Chicago on November 22, 1899, and to that end to give the public information as to the present state of the law and the necessity of amending it by distributing such reports, papers, and documents, as are designed to accomplish that purpose, and to devote himself assiduously to such duties.

Did you know of the passage of that order?

Mr. BACON. I do not think I ever saw that order.

The CHAIRMAN. Did you know of its passage?

Mr. BACON. I do not recollect of knowing of it.

The CHAIRMAN. Did you aid in securing its passage?

Mr. BACON. I did not. I knew nothing of it.

The CHAIRMAN. Did you urge in any way, as the representative of your committee, this cooperation on the part of the Commission?

Mr. BACON. I did not; no, sir.

The CHAIRMAN. Were you at that time active in this matter?

Mr. BACON. I was, to some extent.

The CHAIRMAN. Were there other agents of that society then cooperating with you?

Mr. BACON. That can hardly be called a society. It was a convention similar to the one that was held in 1900, composed of delegates from national commercial organizations only.

The CHAIRMAN. Do you know what was the result of that action which I have called attention to?

Mr. BACON. It resulted in pressing for the passage of the Cullom bill, which had been drawn just previously thereto.

The CHAIRMAN. Pressing by whom?

Mr. BACON. I think by one or two members of the Commission; perhaps by several.

The CHAIRMAN. What bill was drawn?

Mr. BACON. The bill known as the Cullom bill.

The CHAIRMAN. Yes, sir; but I am speaking more particularly about the results that followed this action that I have just read.

Mr. BACON. Those results were simply an effort on the part of the organizations associated in that effort to secure the passage of the Cullom bill.

The CHAIRMAN. Do you know anything of the circular letter that was prepared by Edward A. Moseley, secretary of the Interstate Commerce Commission, and disseminated generally, or extensively?

Mr. BACON. I do not recollect any circular that was prepared by him?

The CHAIRMAN. You never saw it?

Mr. BACON. I have no recollection of it. I would not say that I never saw it, positively, but I have no distinct recollection of it. I could not say whether I ever saw it or not.

The CHAIRMAN. Are you familiar with that letter?

Mr. BACON. No, sir. If I were familiar with it I would not say that I had no recollection in regard to it.

The CHAIRMAN. I beg your pardon. When I asked this last question I had not in mind that statement.

Mr. BACON. Mr. Chairman, if I may suggest, it seems to me that whatever action was taken by that preliminary organization the present organization is not responsible for, because it was organized on different lines. The present organization consists of the various State and local organizations in connection with the national organizations that were associated in the original movement; but the present organization succeeded that and proceeded on entirely different and independent lines, and although it did ask and urge the passage of the Cullom bill, which was then in its second session before Congress, subsequent to that session it prepared an entirely new bill, the passage of which it urged, and since that it has prepared still another, each being modified by conditions and circumstances that have arisen during that provision.

The CHAIRMAN. But the same provision, substantially, with regard to the rate-making power, was found in all those bills?

Mr. BACON. That is common to them all; yes, sir.

The CHAIRMAN. Common to them all, and that was the feature of the bill most earnestly urged by the Interstate Commerce Commission, was it not?

Mr. BACON. The Interstate Commerce Commission urged the passage of the Cullom bill which comprised a large number of provisions and was very extensive in its range, and designed to remedy a number of serious defects that have been developed in practice under the interstate-commerce act, and the subsequent bills were very much more limited in their provisions; and the final bill was confined to the particular point of conferring special power upon the Commission, together with preventing discriminations.

The CHAIRMAN. You said the other day—or at least I understood you to state—that the power of the Interstate Commerce Commission to make rates was conceded by everyone for ten years after its formation.

Mr. BACON. I think I made a statement to substantially that effect.

The CHAIRMAN. Do you know that within three months after the Commission was organized, the then chairman of the Commission, Mr. Cooley, expressly declared that no such power had been conferred upon the Commission, that it was utterly impracticable, and that that duty could not be performed? Do you know that he said that in an official capacity?

Mr. BACON. I do not know that he made such a statement as that.

The CHAIRMAN. You do not?

Mr. BACON. I have a memorandum of what was stated by Judge Cooley.

The CHAIRMAN. Do you know that Mr. Schoonmaker, within eight

months after the organization of the Commission, substantially used the same language?

Mr. BACON. No, sir. My recollection is directly to the contrary.

The CHAIRMAN. To the contrary?

Mr. BACON. Yes, sir.

The CHAIRMAN. Do you know that repeatedly, between that time and the decision in the maximum-rate cases, the courts declared that that power did not exist?

Mr. BACON. The courts declared that the power to make rates primarily did not exist in the Commission; and the decision of 1897—

The CHAIRMAN. Yes, sir.

Mr. BACON (continuing). Declared that the Commission had no power to determine what change should be made in a rate which was found to be unjust or unreasonable.

The CHAIRMAN. Yes.

Mr. BACON (continuing). And it declares that its power was limited to the denunciation of the rate and limited to declaring the fact that it was found to be unreasonable or discriminative, as the case might be. On that point I have a paper here which I will read to the committee, which will be of interest—a paper which, I may say, was drawn by the secretary or the assistant secretary of the Interstate Commerce Commission, at my request, in relation to this very point of the position of Judge Cooley.

The CHAIRMAN. You can file that with the committee.

Mr. BACON. I would like to read it.

The CHAIRMAN. I think that it will be unnecessary. It will take up too much time.

Mr. BACON. It will take me only two or three minutes to read it, and it is directly in answer to the question that you have asked me.

The CHAIRMAN. Very well. Who prepared that, do you say?

Mr. BACON. It was prepared at the office of the Interstate Commerce Commission by either the secretary or the assistant secretary. [Reading:]

I know of no case wherein Judge Cooley said that the Commission had no authority to prescribe a reasonable rate when an existing rate had been found to be unreasonable. During all of the time Judge Cooley was on the Commission—

The CHAIRMAN. Whose statement is that, now, if you please?

Mr. BACON. It is that of either the secretary or the assistant secretary.

The CHAIRMAN. Well, who? Which one?

Mr. BACON. I am not quite sure which.

Mr. MANN. It will be quite easy to ascertain, because the secretary of the Interstate Commerce Commission is here.

Mr. MOSELEY. Mr. Bacon, yesterday I got a letter from you stating that a question had been asked you, and asking myself, or the Interstate Commerce Commission, to state what the facts were. I handed the letter to Mr. Decker, the assistant secretary, and this is the first notice that I have had that he did reply to it. It is not that I want to shirk any responsibility, but I say that the letter was handed to Mr. Decker, the assistant secretary, who has been with the Commission since its organization, and if this reply was sent to you it must be the reply sent you by Mr. Decker.

The CHAIRMAN. Is that paper signed by anybody?

Mr. MOSELEY. From the Interstate Commerce Commission, I suppose, and is a memorandum bearing directly on the facts in question.

Mr. LAMAR. Who handed that to you, Mr. Bacon?

Mr. BACON. It was handed to me this morning.

Mr. LAMAR. Who handed it to you?

Mr. BACON. It was handed to me at the office of the Commission.

The CHAIRMAN. Is it signed by anybody?

Mr. BACON. It is not signed and is not addressed. It is a memorandum handed to me.

Mr. LAMAR. Handed to you by whom?

Mr. BACON. Handed to me by the assistant secretary. I think, Mr. Chairman, that in reply to your question I am entitled to present this paper. I beg the privilege of reading it to the committee.

Mr. WANGER. We can adopt this as his answer.

Mr. BACON. I make that a part of my statement. It is as follows:

I know of no case wherein Judge Cooley said the Commission had no authority to prescribe a reasonable rate when an existing rate had been found to be unreasonable. During all of the time Judge Cooley was on the Commission it was believed that the Commission had this authority and he joined in the orders forbidding carriers not to charge more than the reasonable rate shown by the evidence in cases involving that question.

A case decided by the Commission in an opinion by Commissioner Schoonmaker has been cited as holding in 1887 that the Commission had no authority to prescribe reasonable rates. This was the case of Thatcher against the Delaware and Hudson Canal Company (1 I. C. C. Rep., 152). But that case did not involve the reasonableness of rates. The complainant shipped grain from his elevator at Schenectady, N. Y., to Boston and Boston points. He desired that the rates for that service should be less than those from stations on the same line nearer to destination. In other words, he wanted an order compelling the roads to depart from the principle of the long and short haul clause. The Commission said it might authorize the carriers upon their application to depart from the rule of that clause, but that it had no power to compel such departure.

The Commission further said the carriers might reduce the rate from Schenectady and also from the shorter distance points and so avoid making an exception to the long and short haul clause, but added that the complainant did not ask the Commission to compel such a reduction from the shorter distance stations, and that no evidence had been offered which would enable it to determine what would be proper and just rates from such stations. Right in this connection the Commission used the language which has been sometimes referred to as disclaiming the power to prescribe a reasonable rate on complaint. It said, as to rates from the shorter distance stations, concerning which no complaint had been made or any evidence offered: "It is therefore impossible to fix them in this case, even if the Commission had power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute." It was impossible to fix rates from the shorter distance stations, because the Commission had before it no complaint and no evidence, and if it had power to make rates generally, that is, without complaint or evidence, it could not have done so in the absence of some information upon the subject. At that time, if the rates were found to be in conflict with the statute, it was believed that the Commission had authority to prescribe the maximum reasonable charge. In that very case the Commission said:

"If the complainant thinks the rates from Schenectady and intermediate points to Boston and Boston points are excessive, he can raise that question directly and distinctly, and the Commission can then enter upon a full investigation of the facts bearing upon it."

That case was decided in July, 1887. Six months afterwards the Commission, including Judge Cooley, held, in the case of Evans against The Oregon Railway and Navigation Company (1 I. C. C. Rep., 325), that the wheat rate from Walla Walla, Wash., to Portland, Oreg., was unreasonable, and ordered it to be reduced so as not to exceed 23½ cents during the existing grain season, the expectations being that there would be a further reduction for the next season. The decisions of the Commission in other cases showed the exercise of the authority to prescribe maximum reasonable rates in cases arising on complaint up to May, 1897, when the decision of the United States Supreme Court was rendered holding that the statute did not confer that authority upon the Commission.

The CHAIRMAN. Now, let me call your attention to this language of Judge Cooley, and I will then ask you if you are familiar with it.

The Commission would be required to act as rate makers for all the roads, and would be compelled to so adjust the tariffs as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This, in any considerable state, would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statutes which would require its performance would render the due administration of the law altogether impracticable, and that fact tends strongly to show that such a construction could not have been intended.

Are you familiar with that language?

Mr. BACON. I think I have seen that before; and I understand that that applies to the general initiative rate-making power.

The CHAIRMAN. Yes, sir. This bill does not contemplate anything of that kind?

Mr. BACON. It simply contemplates the making of a rate——

The CHAIRMAN. Yes, sir.

Mr. BACON (continuing). Which, upon due investigation, has been found to be unreasonable and unjust.

The CHAIRMAN. That is, the action of the Commission must be in response to a complaint to the Commission?

Mr. BACON. Yes, sir; in response to the complaint.

The CHAIRMAN. Yes, sir. Then the jurisdiction of the committee in this particular matter would be dependent upon the character of the complaint?

Mr. BACON. The character of the complaint, and the evidence produced.

The CHAIRMAN. Then if the complaint was enlarged so as to cover a number of roads, the jurisdiction of the Commission would be corresponding to that?

Mr. BACON. There is no doubt, if the complaint embraced a number of different complaints——

The CHAIRMAN. If the complainant was authorized to make a complaint against one rate contained in a schedule, he could with equal propriety complain of all the rates in that schedule, could he not, and make one complaint of it?

Mr. BACON. He could, but I think the Commission would exercise its discretion as to entertaining a case that involved——

The CHAIRMAN. How could it exercise its discretion under this bill if it was to confine its inquiry to the complaint? You have just said that the complaint fixed the jurisdiction under this bill.

Mr. BACON. I have said that the complaint could be filed. I did not say that it fixed the jurisdiction.

The CHAIRMAN. I understood you to say so. That is what I asked you.

Mr. BACON. I did not intend to say so. If I did, it was a mistake.

The CHAIRMAN. Is it not your opinion that under this bill a complainant would have a right to make a complaint against all the rates from all the stations named in a given schedule?

Mr. BACON. I think if such a complaint were made——

The CHAIRMAN. Will you answer that question? Under the bill would he not have that authority?

Mr. BACON. I think I answered substantially the same question in the affirmative.

The CHAIRMAN. That he would have?

Mr. BACON. Yes, sir. But I did say that it would be in the discretion of the Commission whether to entertain such a broad complaint.

The CHAIRMAN. Then you think that under the provisions of this bill, and in the interest of remedying present difficulties, it would be in the province of the Commission to select such parts of a man's complaint as it saw fit to regard as important and exclude others?

Mr. BACON. I think it would be in its province to require that the complaint should be limited to a series of rates that were dependent upon one another.

The CHAIRMAN. To a series of rates?

Mr. BACON. Yes. Rates that had a necessary relation to one another.

The CHAIRMAN. Now, it often happens, does it not, that a particular rate upon one road is largely dependent upon another rate?

Mr. BACON. To be sure.

The CHAIRMAN. To be sure. And it happens that a rate from one locality is very often dependent upon a rate from another locality?

Mr. BACON. One of the principal objects of this bill is to prevent discrimination between those several points that come into competition for business and to establish the proper relations between roads to and from competitive points.

The CHAIRMAN. Then it would be utterly impossible, in the just administration of this law, for the Commission to confine itself to a single rate upon one commodity from one locality, would it not?

Mr. BACON. I would not say that it would be impossible. There might be occasions and situations in which it would be essential that it should be restricted.

The CHAIRMAN. Yes. But it would not suffice for them to say that they would consider nothing but a single rate upon a single commodity from a single shipping place?

Mr. BACON. If the rates which were combined in the complaint had no bearing upon each other and no relation to each other, I think it would be perfectly competent for them to require the complaint to be amended.

The CHAIRMAN. Is it not true, in a certain sense, that every rate is inter-dependent and is related to every other rate in the schedule?

Mr. BACON. That is a pretty broad statement, Mr. Chairman.

The CHAIRMAN. Is it not true?

Mr. BACON. Not by any means.

The CHAIRMAN. It is not?

Mr. BACON. Have you any idea of the number of rates in force in this country?

The CHAIRMAN. I think I have.

Mr. BACON. It would be utterly impossible to say what the relation was.

The CHAIRMAN. You say they have no relation?

Mr. BACON. No, sir.

The CHAIRMAN. They have, certainly, in the contemplation of the railway companies in the matter of surplus earnings, do they not, over and above the operating expenses?

Mr. BACON. Not all the rates in the country.

The CHAIRMAN. The rates of that particular road?

Mr. BACON. The rates of any particular road.

The CHAIRMAN. They do have relation to one another?

Mr. BACON. Yes, sir; certainly.

The CHAIRMAN. And that, too, in an important sense, more or less, to one of the parties to the controversy, to the railroad company, namely?

Mr. BACON. Not of any greater importance to the railroad company than to the public? They have equal interests.

The CHAIRMAN. But they do have that important relation?

Mr. BACON. They certainly do have an important relation.

The CHAIRMAN. What is, in your judgment, the serious evil properly to be complained of relating to railway charges?

Mr. BACON. Well, sir, I should say that there were two. First, there is the relation of rates between competing points, and the relation of rates between competing commodities, all of which are very important.

The CHAIRMAN. They are all in the nature of discriminations?

Mr. BACON. They are all in the nature of discriminations, but beyond that, and of far greater importance, is the general scale of rates throughout the country, which has been raised from year to year during the past four years to an extent that has produced, according to a statement made by the Interstate Commerce Commission, a difference in the charges for the year ending June 30, 1903, of \$155,000,000 in excess of what the rates would have been that were in force in 1899.

The CHAIRMAN. That is, including the volume of traffic?

Mr. BACON. On the same tonnage.

The CHAIRMAN. On the same tonnage?

Mr. BACON. The same rate per ton of 1899, applied to the traffic of 1903, produced a difference of over \$155,000,000 in excess.

The CHAIRMAN. That included the increased traffic?

Mr. BACON. No, sir; it takes the same rate per ton which was applied in 1899.

Mr. CUSHMAN. The same number of tons?

Mr. BACON. The same rate per ton that was in force in 1899, applied to the tonnage of 1903, increases the earnings by \$155,000,000. That is to say, if the tonnage of 1903 was charged at the rates in force in 1899, the revenues derived by the railroads, or the charges paid by the public, were \$155,000,000 greater than they would have been under the rates of 1899. That is the statement of the Interstate Commerce Commission, made to the Senate in response to a resolution of inquiry.

Mr. CUSHMAN. Do you mean that the same rate applied in 1899 applied now to the same number of tons would produce this excess?

Mr. BACON. Not quite so much. The tonnage in 1903 was a little more, but the rate of 1903 applied to the tonnage of 1899 would produce \$155,000,000 more.

Mr. CUSHMAN. That might be a question of increased amount of tonnage.

Mr. BACON. That has no bearing upon it.

Mr. CUSHMAN. Then I do not understand you.

Mr. BACON. I have endeavored to make myself plain.

Mr. MOSELEY. If the rate of 1899 had been in force in 1903 the amount of freight paid would have been \$155,000,000 less than it was.

Mr. BACON. That is it, exactly. And this is a question that concerns the public. One point is very often forgotten—that is, that shippers have no concern as to what the actual freight rate is. Their concern

is that no one else shall have a lower rate than they have and that other places with which they have to compete shall have no discrimination in their favor against them; but the public is concerned in the rate itself. Everything that is consumed, in every form, whether for food or clothing, or heating or building, or for any other purpose whatever, is subject to these rates of freight, and the public are the ones who bear that rate.

The CHAIRMAN. Now, to get back to this matter of the character of the complaints that are made. Is it not true that the great volume of complaint is with regard to some form of discrimination, either in rates, or as to persons, or as to commodities, or as to localities?

Mr. BACON. That is the burden of the complaints, so far as shippers are concerned.

The CHAIRMAN. That is the great burden?

Mr. BACON. No, sir; the shippers are one class and the public are another. The shippers constitute perhaps one-fiftieth part of the public.

The CHAIRMAN. Yes, sir.

Mr. BACON. And as long as their rates are equitable with regard to each other and with reference to the various commodities they handle they are fully satisfied; but they are the ones that make complaints against this particular evil, this evil of discrimination.

The CHAIRMAN. Yes.

Mr. BACON. That is, discrimination between localities and between commodities. But the public at large is making complaint through the press of the country in the most impressive manner, and has been for years. Almost every paper in the country has been burdened with this complaint. But the people have no organization before Congress. They are left entirely to themselves and they are pleading their cause in an indefinite and indirect manner.

The CHAIRMAN. You have been appearing heretofore, have you not, as the representative of the shippers?

Mr. BACON. I am the representative of the shippers.

The CHAIRMAN. The commercial associations?

Mr. BACON. Yes sir; but the shippers naturally feel that they are interested—

The CHAIRMAN. Let me go a little further. So that, so far as your representative capacity is concerned, you are interested in these discriminations, and drawbacks, and things of that kind?

Mr. BACON. That is true. But we shippers—

The CHAIRMAN (continuing). And the people whom you represent, as you have just stated, have but little care as to what the rate is if it is equitable with regard to all of the shippers?

Mr. BACON. That is it.

The CHAIRMAN. That is it. So that when you make these other representations of the complaints of the populace that are voiced in the newspapers, you are getting outside of your official relations to this subject, are you not?

Mr. BACON. I take exception to the term "populist," because they are not embraced in any party.

The CHAIRMAN. I did not say "populist." I said "populace."
[Laughter.]

Mr. BACON. I beg your pardon. While the shippers are interested in the rates being properly adjusted, they naturally feel a reciprocal

interest toward those from whom they derive their business, those with whom they are doing business, and when they see that the rates are excessive, and that their customers and clients are suffering unjustly in regard to it, they naturally feel that it is necessary for them to exert their influence as far as it may be necessary to relieve that.

The CHAIRMAN. So that in representing this part of the subject—

Mr. BACON. I am speaking for the public.

The CHAIRMAN. You are speaking emotionally rather than professionally? [Laughter.]

Mr. BACON. Yes, sir.

The CHAIRMAN. I would be glad, Mr. Bacon, if you would tell us in what way legislation is necessary—what new legislation is necessary—in order to remedy this vast number of complaints that are the complaints of the shippers which you have just spoken of?

Mr. BACON. The very legislation which is comprised in the bill which has been prepared through this committee.

The CHAIRMAN. Have they not now legislation which prohibits discriminations between persons?

Mr. BACON. Yes, sir.

The CHAIRMAN. Do they not have legislation which prohibits discriminations between localities?

Mr. BACON. We have legislation which prohibits it, but we have no means of enforcing it. The Commission is absolutely—

The CHAIRMAN. We will get to that after a bit. Do we not have legislation with regard to discriminations as to commodities?

Mr. BACON. There is legislation—that is, there is a declarative statement in an act of Congress prohibiting that.

The CHAIRMAN. Prohibiting that?

Mr. BACON. We are not asking for legislation to prohibit it. We are asking for the means of enforcing that legislation.

The CHAIRMAN. Yes, sir. Now, we have a criminal statute to aid in its enforcement, have we not?

Mr. BACON. Not in its enforcement.

The CHAIRMAN. We have not a criminal statute?

Mr. BACON. Only in regard to personal relations.

The CHAIRMAN. Have we not legislation with regard to discriminations, prohibiting discriminations as to commodities?

Mr. BACON. There are no penalties.

The CHAIRMAN. There are no penalties?

Mr. BACON. No, sir.

The CHAIRMAN. A discrimination either against the person or against the locality or again at a rate is forbidden by the law, is it not?

Mr. BACON. It is forbidden that rates shall be discriminative between localities or between commodities, or, as the act expresses it, between different descriptions of traffic; but it ends there.

The CHAIRMAN. And between persons?

Mr. BACON. I left out the persons.

The CHAIRMAN. See if it ends there. I think it does not. Discrimination in either of these respects by a carrier is prohibited, you say?

Mr. BACON. It is prohibited; yes, sir.

The CHAIRMAN. Then it is an offense, is it not, against the statute—a violation of the statute?

Mr. BACON. It is a violation of the statute.

The CHAIRMAN. Have we not a Commission whose duty it is to make inquiry with regard to all violations of the provisions of that statute?

Mr. BACON. We have, and they have made inquiries and have found that violations do occur in many instances, and have attempted to remedy it, without effect.

The CHAIRMAN. Whenever they find that there is a violation of the statute it is their duty, is it not, under the statute, to proceed to the courts for remedies?

Mr. BACON. I do not understand that it is their duty to proceed through the courts. It is their duty to hear any complaint respecting such violations.

The CHAIRMAN. And when they hear that a violation of the statute has occurred, you say that you have not yet known that it was their duty to proceed to the courts?

Mr. BACON. No, sir. It is their duty to investigate.

The CHAIRMAN. To investigate?

Mr. BACON. And report.

The CHAIRMAN. Yes. And your understanding of the law—the present law—is that whenever they find that there is a violation, that ends the matter, except as they may advise the discontinuance of it?

Mr. BACON. The act states that on finding any violation of the law the Commission shall notify the carrier to that effect and notify it to discontinue that violation.

The CHAIRMAN. Yes.

Mr. BACON. Those are the words the statute uses.

The CHAIRMAN. And in your judgment that ends the duty and the power of the Commission.

Mr. BACON. The Commission is authorized—

The CHAIRMAN. Will you just answer that question, please?

Mr. BACON. What is the question? Just let me have it again.

The stenographer read the question as follows:

And in your judgment that ends the duty and the power of the Commission?

The CHAIRMAN. When they have ordered the Commission to desist?

Mr. BACON. No, sir; it does not.

The CHAIRMAN. That is, for the railroad companies to desist?

Mr. BACON. No, sir. It is authorized to proceed to enforce its orders through the courts.

The CHAIRMAN. Yes.

Mr. BACON. In case that is not obeyed by the railway company. But let me say right here—

The CHAIRMAN. Go on and answer that point.

Mr. BACON (continuing). The extent of the power conferred by the act upon the Commission in regard to a discriminative rate or an excessive rate is to so declare it, and to notify the company to cease and desist from that violation. The result of it is that its order may be complied with by a change of 1 per cent, we will say, on the existing rates, when under the existing circumstances, it is plain that there ought to be a change of 10 or 20 per cent.

The CHAIRMAN. Yes.

Mr. STEVENS. I wish you would file with the committee all the instances you know of that thing having been done. I think it will be of great use for us to investigate.

Mr. BACON. It will be a pretty difficult thing to do.

Mr. STEVENS. That thing has been done, I understand.

Mr. BACON. It has been done.

Mr. STEVENS. I would like to know the instances. I wish that you would file that information with the committee.

Mr. BACON. I will give you one instance right at this present moment.

Mr. STEVENS. If you have time, I wish that you would file full information on that with the committee.

Mr. BACON. I will give you one instance right now, of a case in which I had an important part myself, known as the Milwaukee case, which was brought against seven different railroads transporting grain from west of the Mississippi to Milwaukee on one hand and Minneapolis on the other. The rates to Milwaukee were believed to be unreasonable in proportion to the rates to Minneapolis. That case was brought before the Commission, and was decided favorably to the Milwaukee people, and a definite order was issued by the Commission requiring that the rates to Milwaukee should not exceed the rates to Minneapolis by a greater sum than the difference shown in the distances carried on the roads in question—the difference shown in the rates carried on the roads in question for corresponding distances.

I will say that the distances carried are applicable only to short distances, and are not applicable to terminal points; but the differences between those short distances—the local traffic, as it is called—were applied to the terminal rates, and the roads were required to change those terminal rates in conformity therewith. That would have involved a reduction from Milwaukee, from the points in question—two or three hundred of them, probably—of from 2 to 3 cents per hundred pounds, and would have equalized the two markets. That is, it would have placed the two markets upon a par for grain shipments west of the Mississippi River on their way to the seaboard. But the railway companies declined to make the change, and instead of making the change required, made a change of about one-half, in most cases less than one-half, of the difference required by the Commission. That, as you will readily see, afforded no relief, for the reason that it required the full change which the Commission found was necessary in order to put the markets on an equality. That is one case that I have given you. I could probably cite a great many others by looking over the records, but this shows the difference, clearly.

Thereupon the committee adjourned until Friday, December 16, 1904, at 10.30 o'clock a. m.

NEW ORLEANS, *December 6, 1904.*

HON. JOHN SHARP WILLIAMS,
Washington, D. C.

DEAR SIR: I wish to assure you of the appreciation of the members of the Central Yellow Pine Association for the interest you express in your recent letter to me, in legislation to amend the interstate commerce act to the extent that the Commission, upon complaint, will have the power to fix a reasonable rate after hearing.

A number of bills have been introduced into Congress, all seeking to amend the law in about the same way, some, however, to a greater extent than others.

In view of the fact that the railroad interests will oppose any kind of legislation enlarging the powers of the Interstate Commission it has been deemed best to try, at this time, to secure only such an amendment as is represented by the Cooper bill. If any larger powers are undertaken to be secured it is feared that through the opposition of the friends of the railroads legislation of any kind in the interest of the public will fail.

It has been suggested by some who are in favor of legislation that the Cooper bill is not adequate, and that the measure is imperfect and if enacted into law will afford very little if any relief, for the following reasons:

First. That the first clause of the bill does not sufficiently authorize the Commission or make it its duty to find what is a reasonable and lawful rate to be substituted in lieu of one found to be unreasonable and unlawful; and, second, the provisions of the bill which authorize the court to set aside the order of the Commission if it is found to be unjust or unreasonable on the facts is, in the opinion of some who have given the subject thought, fatal to the purposes of the bill.

I have asked Mr. Bacon, chairman of the executive committee of the Interstate Law Association, who is in Washington at the present time, in charge of the measure, to confer with you and to secure your assistance in getting a favorable report from the House committee.

If the Cooper bill as presented is not adequate to secure small measure of relief contemplated, I hope through your efforts it can be, in committee or after it is presented to the House, amended so that shippers when they are unjustly treated by the railroads can be assured of prompt relief upon complaint and after hearing.

Yours, very truly,

GEO. S. GARDINER,
President Central Yellow Pine Association.

List of cases decided prior to the Supreme Court decision in the Maximum Rate case May 24, 1897 167 U. S., 479, in which the Commission ordered changes to be made in rates found to be unjust or unreasonable.

Title of case.	Date.	Citation.
Evans v. O. R. & N. R. Co.....	Dec. 3, 1887	1 I. C. C. Rep., 325.
Reed v. O. R. & N. R. Co.....	do	1 Ib., 825.
Farrar v. E. T., V. & G. R. Co.....	Feb. 15, 1888	1 Ib., 480.
Pyles & Sons v. E. T., V. & G. R. Co.....	do	1 Ib., 465.
Hurlburt v. Penn. R. Co.....	July 20, 1888	2 Ib., 130.
Hurlburt v. L. S. & M. S. R. Co.....	do	Do.
Parkhurst & Co. v. Penn. R. Co.....	July 23, 1888	2 Ib., 181.
Nicolai v. Penn. R. Co.....	do	Do.
New Orleans Cotton Exchange v. C. N. O. & T. P. R. Co.....	Nov. 26, 1888	2 Ib., 375.
James & Abbott v. E. T., V. & G. R. Co.....	Sept. 25, 1889	3 Ib., 225.
New Orleans Cotton Exchange v. Ill. C. R. Co.....	Apr. 11, 1890	3 Ib., 534.
Re Alleged Freight Rates on Food Products.....	July 19, 1890	4 Ib., 116.
Harvard Co. v. Penn. Co.....	Oct. 23, 1890	4 Ib., 212.
Coxe Bros. & Co. v. L. V. R. Co.....	Mar. 13, 1891	4 Ib., 585.
Boston Fruit & Produce Exchange v. N. Y. & N. E. R. Co.....	Mar. 19, 1891	4 Ib., 664.
Delaware State Grange v. N. Y., P. & N. Ry. Co.....	Apr. 13, 1891	4 Ib., 588.
James & Mayer B. Co. v. C. N. O. & T. P. R. Co.....	June 29, 1891	4 Ib., 744.
Florida Railroad Commission v. S. F. & W. R. Co.....	Oct. 29, 1891	5 Ib., 13.
Lehmann, Higginson & Co. v. T. & P. R. Co.....	Nov. 30, 1891	5 Ib., 44.
Kling v. S. F. & W. R. Co.....	Jan. 28, 1892	5 Ib., 120.
Perry v. F. C. & P. R. Co.....	do	5 Ib., 97.
Murphy, Wasey & Co. v. Wabash R. Co.....	Jan. 30, 1892	5 Ib., 122.
Merchants' Union of Spokane v. No. Pac. R. Co.....	Nov. 28, 1892	5 Ib., 473.
Independent Refiners' Assn. v. W. N. Y. & P. R. Co. (3 cases).....	Nov. 14, 1892	5 Ib., 415.
Troy Bd. Trade v. Ala. M. R. Co.....	Aug. 15, 1893	6 Ib., 1.
Duncan v. A. T. & S. F. Ry. Co.....	Nov. 3, 1893	6 Ib., 85.
Duncan v. So. Pac. Co.....	do	Do.

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List of cases decided prior to the Supreme Court decision in the Maximum Rate case May 24, 1897, etc.—Continued.

Title of case.	Date.	Citation.
Morrell v. Un. Pac. R. Co.	Dec. 22, 1893	61 C. C. Rep., 121.
Newland v. No. Pac. R. Co.	Jan. 31, 1894	6 Ib., 131.
Page v. D. L. & W. R. Co.	Mar. 23, 1894	6 Ib., 143.
Cincinnati Freight Bureau v. C. N. O. & T. P. R. Co.	May 29, 1894	6 Ib., 195.
Chicago Freight Bureau v. L. N. A. & C. R. Co.	do	Do.
Charleston Truck Farmers' Assn. v. N. E. R. Co.	Apr. 6, 1895	6 Ib., 295.
Hill & Bro. v. N. C. & St. L. R. Co.	Oct. 19, 1895	6 Ib., 343.
Cordele Machine Shop v. L. & N. R. Co.	do	6 Ib., 361.
Colorado Fuel & Iron Co. v. So. Pac. Co.	Nov. 25, 1895	6 Ib., 433.
Evans v. Union Pac. R. Co.	Feb. 8, 1896	6 Ib., 520.
May v. McNeil, receiver, O. R. & N. R. Co.	do	Do.
Jerome Hill Cotton Co. v. M., K. & T. R. Co.	May 20, 1896	6 Ib., 601.
Missouri R. R. Commission v. Eureka Springs R. Co.	Feb. 26, 1897	7 Ib., 69.
Milk Producers' Prot. Assn. v. D. I. & W. Ry.	Mar. 13, 1897	7 Ib., 92.

List of cases decided subsequent to the Maximum Rate decision of the Supreme Court, May 24, 1897 (167 U. S., 479), in which the Commission found rates complained of to be unjust or unreasonable and ordered them to be discontinued.

Title of case.	Date.	Citation.
Suffern, Hunt & Co. v. I. D. & W. R. Co.	July 1, 1897	7 I. C. C. Rep., 255 (2 cases).
Cary v. Eureka Sprge. R. Co.	Aug. 21, 1897	7 Ib., 286.
Callaway v. L. & N. R. Co.	Dec. 31, 1897	7 Ib., 431.
Milwaukee Chamber Commerce v. C., M. & St. P. R. Co.	Jan. 19, 1898	7 Ib., 481.
Cattle Raisers' Assn. v. Ft. W. & D. C. R. Co.	Jan. 20, 1898	7 Ib., 513.
Phillips, Bailey & Co. v. L. & N.	Oct. 29, 1898	7 Ib., 93.
Grain Shippers' Assn. of N. W. Iowa v. L. C. R. Co.	June 22, 1899	7 Ib., 158.
Savannah Bureau, etc., v. L. & N. R. Co.	Jan. 8, 1900	8 Ib., 377.
Hampton Board of Trade v. N. C. & St. L. R. Co.	Mar. 10, 1900	8 Ib., 503.
Warren-Ehret Co. v. Cent. R. of N. J.	Dec. 22, 1900	8 Ib., 598.
McGrew v. Mo. Pac. R. Co.	Feb. 8, 1901	8 Ib., 630.
Hilton Lbr. Co. v. W. & W. R. Co.	Apr. 10, 1901	9 Ib., 17.
Natl. Wholesale Lbr. Dirs. Assn. v. N. & W. R. Co.	Dec. 11, 1901	9 Ib., 87.
Wilm. Tariff Assn. v. C. P. & V. R. Co.	Dec. 17, 1901	9 Ib., 118.
Johnson v. C., St. P., M. & O. R. Co.	May 7, 1902	9 Ib., 221.
Re Proposed Advances in Freight Rates	Apr. 1, 1903	9 Ib., 382.
Mayor, etc., of Wichita v. A., T. & S. F. R. Co.	Oct. 24, 1903	9 Ib., 534.
Marten v. L. & N. R. Co.	Nov. 21, 1903	9 Ib., 581.
Georgia Peach Growers' Assn. v. Atlantic Coast Line R. Co.	June 4, 1904	10 Ib., 255.
Aberdeen Com. Group Assn. v. M. & O. R. Co.	June 25, 1904	10 Ib., 289.
N. O. Live Stock Exch. v. T. & P. R. Co.	do	10 Ib., 327.
Re Transportation of Fruit on P. M. & Mich. Cent. R. Co.	July 27, 1904	10 Ib., 360.

NOTE.—The foregoing cases of the Commission involved the unreasonableness and injustice of rates only.

Numerous other decisions of the Commission involved the reasonableness of rates considered collaterally with unjust discrimination, undue preference, and violations of the long and short haul section.

EDW. A. MOSELEY,
Secretary.

FRIDAY, *January 6, 1905.*

The committee met at 10.40 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. We will resume the hearings upon the interstate commerce propositions. Mr. Bacon is here, and Mr. Mann, I understand, desires to ask him some questions.

STATEMENT OF MR. R. P. BACON—Resumed.

Mr. MANN. How long have you been interested in the proposed amendment or proposed amendments to the interstate commerce law?

Mr. BACON. I have taken an active part in the matter for five years past, and have felt interested in it ever since the decision of the Supreme Court which denied the power to the Commission to designate what change should be made in a rate found to be unjust or discriminative.

Mr. MANN. And during that time have you given very special study to the subject?

Mr. BACON. I have, so far as I could do so in connection with proper attention to my business.

Mr. MANN. You are the chairman of the executive committee of the so-called Interstate Commerce Law Convention?

Mr. BACON. Yes, sir.

Mr. MANN. Do you consider yourself an expert on the subject of rate making?

Mr. BACON. I would not make such a statement; no, sir. I have given a good deal of study to it and feel fairly well informed in regard to it, but I would not consider myself an expert, by any means.

Mr. MANN. Do you consider yourself an expert upon the question of what legislation should be enacted to give the Interstate Commerce Commission power to make freight rates?

Mr. BACON. I have definite ideas in relation to it.

Mr. MANN. Well, if you would answer my question I think we would get to it easier.

Mr. BACON. I should not say that I am an expert in legislation, for I am not.

Mr. MANN. Do you consider yourself an expert on the question as to whether changes should be made, and if so, to what extent, in the power of the Interstate Commerce Commission?

Mr. BACON. I must say that I do not consider myself an expert in any of these matters. I have given much attention to them and have reached definite conclusions in relation to them, which are mature, and on which I am very clear.

Mr. MANN. Do you consider that the subject of rate making by railroads is a matter requiring expert or technical knowledge, or a subject which can be passed upon by the ordinary layman without expert knowledge?

Mr. BACON. Railroad men have recently testified that the making of rates is not a science.

Mr. MANN. If you will answer my question I will be very much obliged to you.

Mr. BACON. Please repeat it.

Mr. MANN. I did not ask about railroad men, but I asked for your opinion.

Mr. BACON. I answered that question by giving the opinion of railroad traffic managers, which I fully coincide in.

Mr. MANN. You agree that it does not require—you state that it does not require an expert knowledge to make freight rates?

Mr. BACON. That is not exactly what I mean.

Mr. MANN. Won't you tell us just what you do mean on the subject.

Mr. BACON. The matter of making rates is largely a matter of experiment and of development. Rates are made by traffic managers with the view to testing their correctness and their practicability, and as changes are found to be necessary in the workings of the business they are made, one after another, until finally a rate is reached which is found to be practicable and as satisfactory as circumstances will permit.

Mr. MANN. If you will permit me to direct your attention to my question, it was as to whether it requires expert knowledge in order to make this, or whether freight rates can be made at random without expert knowledge, in your judgment.

Mr. BACON. They certainly can not be made at random, but I consider that a proper study of the subject on the part of one who gives his attention to it, and particularly one who is charged with the duty of regulation of railroad rates, will give him sufficient knowledge on the subject to determine whether the rates already existing are correct, are just, are reasonable, or not; and, if not, what should be substituted in their place that will be so. I do not consider that it is necessary that a man should have had experience in the traffic department of a railroad in order to form a judgment in regard to the determination of a question of that kind.

Mr. MANN. Of course, I did not ask you that question, although the information is very valuable. What I wanted to know was whether it required, in your judgment, expert knowledge to make freight rates.

Mr. BACON. If you mean, by expert knowledge, the knowledge of the man who has given his life to the making of rates, I should answer the question in the negative.

Mr. MANN. You think it does not require any very extended knowledge to determine?

Mr. BACON. You asked me if it required expert knowledge.

Mr. MANN. I did.

Mr. BACON. And I replied to that.

Mr. MANN. That it does not require expert knowledge to make freight rates?

Mr. BACON. That it does not require the expert knowledge acquired by actual service as the traffic manager of a railroad.

Mr. MANN. You hedge your answer so that it is valueless. In your judgment, does it require expert knowledge to determine upon the making of freight rates or not?

Mr. BACON. I think I have answered that, Mr. Mann.

Mr. MANN. I do not think you have.

Mr. BACON. I would like to hear my answer repeated, if the stenographer will give it to me.

The stenographer read as follows:

Mr. MANN. Of course I did not ask you that question, although the information is very valuable. What I wanted to know was whether it required, in your judgment, expert knowledge to make freight rates.

Mr. BACON. If you mean by expert knowledge the knowledge of the man who has given his life to the making of rates, I should answer the question in the negative.

Mr. MANN. You think it does not require any very extended knowledge to determine.

Mr. BACON. You asked me if it required expert knowledge.

Mr. MANN. I did.

Mr. BACON. And I replied to that.

Mr. MANN. That it does not require expert knowledge to make freight rates?

Mr. BACON. That it does not require the expert knowledge acquired by actual service as the traffic manager of a railroad.

Mr. MANN. Of course it is immaterial how the expert knowledge is acquired.

Mr. BACON. I will answer further, that it does require knowledge from investigation of the subject and examination into the circumstances and conditions relating to the particular rate in question.

Mr. MANN. Now, to change the subject. You testified before our committee that the Elkins bill was prepared by the general solicitor of the Pennsylvania Railroad, and that the Cooper-Quarles bill was substantially the Elkins bill.

Mr. BACON. As the Elkins law was amended by agreement between the general counsel of the Pennsylvania Railroad and representatives of the executive committee of the Interstate Commerce Law Convention.

Mr. MANN. You testified, as I remember, to this effect that "the bill now before you, No. 6273, comprises the provisions of the Elkins bill, revised as above stated, with the exception of the pooling and traffic association provision, which has been omitted. All the provisions contained in the present bill were contained in each of the several bills heretofore mentioned," including the Elkins bill. I understand that to be your statement?

Mr. BACON. Yes, as I understand it. I will state, however, that there is one omission in the Cooper bill from the original Elkins bill, which is this: The Elkins bill provides that a rate fixed by order of the Commission should only be in force one year. That has been omitted, and there has been submitted in its place authority for the Commission to modify or change a rate that it has previously made, upon full hearing of both parties, at any time.

Mr. MANN. And that was the only substantial change made?

Mr. BACON. That was the only change of any importance.

Mr. MANN. In other words, as you said in the testimony before this committee, the Cooper-Quarles bill is simply a redraft of the revised Elkins bill, eliminating the pooling section?

Mr. BACON. Substantially so; yes.

Mr. MANN. The Elkins bill, according to your statement, was prepared directly and drawn personally by the general counsel of the Pennsylvania Railroad Company.

Mr. BACON. It was so stated at the time, and I believe that to have been the case.

Mr. MANN. Well, do you not know whether it is the case? You were in consultation with Mr. Logan, were you not?

Mr. BACON. Yes, sir.

Mr. MANN. And you knew whether he drew the bill or not?

Mr. BACON. It was the general understanding that he drew it, and in my negotiations with him it was so treated.

Mr. MANN. Did you have any statement from him as to whether he drew it?

Mr. BACON. I think that he stated to me that he drew the bill.

Mr. MANN. Who is the vice-chairman of your law convention?

Mr. BACON. The vice-chairman is Mr. Charles H. Seybt, of St. Louis.

Mr. MANN. He is a director in the Vandalia Railroad, is he not?

Mr. BACON. I understand he is; yes, sir.

Mr. MANN. That is a part of the Pennsylvania Railroad system, is it not?

Mr. BACON. It is a part of its system; whether it is owned or leased I do not know. I think it is leased.

Mr. MANN. It is a part of the Pennsylvania system, and the Pennsylvania Railroad determines who the directors shall be?

Mr. BACON. That I am not certain about; but it is understood to be under the control of the Pennsylvania Railroad Company.

Mr. MANN. The secretary of your convention is Mr. Frank Barry?

Mr. BACON. Yes, sir.

Mr. MANN. He is also the manager of the organization in Washington?

Mr. BACON. We do not style him manager; he represents the committee in Washington.

Mr. MANN. Did you not elect him as manager of the organization in Washington?

Mr. BACON. No, sir; he was the secretary, elected as secretary, with the understanding, however, that he would spend his time in Washington during the sessions of Congress.

Mr. MANN. The reports of your proceedings show that you elected him as manager of the organization.

Mr. BACON. Will you please cite it?

Mr. MANN. I will, although I do not know whether I can pick it right out at this moment or not. I will call your attention to it.

Mr. BACON. He was elected by the executive committee at a meeting held after the adjournment of the convention, and he was elected as secretary.

Mr. MANN. Elected as secretary by the committee?

Mr. BACON. By the committee; yes, sir.

Mr. MANN. I will call your attention to that report later, so that you may know what the title is that you conferred upon Mr. Barry.

Mr. BACON. Whatever he may be styled it is expected that he will be in Washington during the sessions of Congress for the purpose of giving any information that may be desired in relation to proposed legislation.

Mr. MANN. He occupied the same position a year ago?

Mr. BACON. Yes, sir.

Mr. MANN. And was here in Washington in charge of the movement inaugurated by the Interstate Commerce Law Convention, which you are also representing?

Mr. BACON. He was; yes, sir.

Mr. MANN. Did you ever see the article which he wrote, or purported to write, published in "Freight," of April, 1904?

Mr. BACON. I do not now recall it.

Mr. MANN. I will call your attention to a statement in that publication [reading]:

Progress is being made slowly toward the enactment of the Cooper and Quarles bills to amend the act to regulate commerce, but it is satisfactory withal. * * * Thus far, however, a majority of that committee has refused to accord us so much as a hearing, and its chairman and several of the influential members assert that they will not consent to spend any time upon the subject, being wearied with the importunities of the public during the past few sessions of Congress for such legislation. This committee is so constituted that its majority stands as a "stone wall" to prevent any enactments which may be disapproved by the railroads of the country.

Did you ever see that article?

Mr. BACON. It seems to me that I have seen it. I have not a very distinct recollection about it. But, however that may be, I will say that that is a purely personal act on his part, not authorized by the committee or coming under its cognizance in any way.

Mr. MANN. Do you employ a secretary who as secretary writes articles for the public press which you do not approve of?

Mr. BACON. I hardly think it is competent for the committee to pass its own opinion upon the act of the secretary outside of the duties of his office.

Mr. MANN. Do you approve of an article of this sort?

Mr. BACON. I hardly want to express an opinion in relation to that. I do not think that has any bearing upon the merits of this legislation.

Mr. MANN. If it has no bearing upon the merits of this legislation, then why do you permit your secretary to publish such a thing and why do you also publish such things?

Mr. BACON. We can hardly be expected to control every movement and every utterance of our secretary. In regard to your allusion to myself I will say that I have never published anything of that kind.

Mr. MANN. We will come to that later.

You did not want any hearings on this Cooper-Quarles bill?

Mr. BACON. We felt that the hearings held two years ago last April were ample, and we desired to expedite legislation by waiving the offering of any further testimony. We felt, however, that the railways would desire hearings, and for that reason we urged the setting of a time for hearings during the last session of Congress. Having failed in that, we have entirely withdrawn from the offering of further testimony for the purpose of expediting the legislation.

Mr. MANN. You published a pamphlet purporting to contain an address delivered by you to this committee, in which you stated that you did not wish further hearings, as I remember, at the last session of Congress?

Mr. BACON. At the last session of Congress we were seeking to have hearings fixed; but at the latter end of the session—in the last two weeks of the session—we requested or at least stated that we desired no hearings, and if the opposition desired them we wished to have them as speedily as possible, but that in fact we saw no occasion for further hearings on account of the previous one having been so exhaustive.

Mr. MANN. The publication "Freight" you are acquainted with?

Mr. BACON. I have seen it; yes, sir.

Mr. MANN. You are an admirer of it, are you not?

Mr. BACON. I think it is a useful publication in its way.

Mr. MANN. You have warmly commended it over your signature?

Mr. BACON. Yes, I have.

Mr. BACON. You spoke at first as though you had hardly heard of it, and I did not know. In the publication "Freight" you wrote an article in which you stated that—

"Owing to the opposition of the leading members of the Interstate Commerce Committees of the two Houses to any legislation further restricting the power of the carriers to make and enforce such rates as they may see fit, it has been impossible," etc.

Do you believe that statement is true?

Mr. BACON. I think it was true at the time it was written. Don't you think it was true?

Mr. MANN. I know it was not true. I know that it was a libel and a slander. I know it was false, and I believe you know it was false.

Mr. BACON. Well, Mr. Mann, I wish to say that I am not here to be characterized as a falsifier, and I will say, further—

Mr. MANN. Well, if you write articles you must take the consequences.

Mr. BACON (continuing). That where I am known that has been the last thing that has ever been attributed to me. What I said then I said conscientiously.

Mr. RICHARDSON. I would be glad to know what statement you did make on the subject.

Mr. BACON. Mr. Mann just read a statement from a communication which I gave, I believe, to the publisher of "Freight." Is that what it is?

Mr. MANN. That is what it is from; yes.

Mr. BACON. I made the statement conscientiously, and I believed it to be true, and now believe that it was true at the time.

Mr. RICHARDSON. Have you examined the records of the Interstate Commerce Committee and the votes of last session?

Mr. MANN. If you have not seen the records I have the records here, Mr. Richardson.

It is also stated by "Freight" that in your address before the St. Louis Convention that you stated "that over three-fourths of the representatives in Congress owed their presence there to the influence of the railroads." Did you make such a statement?

Mr. BACON. I saw that statement immediately after the convention, and I had no recollection of uttering it. My remarks were entirely extemporaneous at the time, and I could not recall anything of that character.

Mr. MANN. You saw that statement in the November issue of "Freight," and in the December issue of "Freight" you wrote a letter telling "Freight" what a valuable publication it was, but did not consider it necessary to refute that statement?

Mr. BACON. I have not been able to command time to say what I should want to in relation to everything I have seen published in connection with this legislation, and hence did not make any attempt to make any refutation. I did not suppose it was of sufficient importance to require it.

Mr. MANN. I suppose you thought anybody in the country could go out and libel a member of Congress and have no attention paid to

it. It is fortunately true that people in the country generally do not pay much attention to such statements.

Mr. BACON. As I said before, I have no recollection of saying that and had not at the time, although I saw it within two or three days after the convention.

Mr. MANN. I sincerely hope, Mr. Bacon, that a gentleman of your standing—and I do appreciate the high standing you have—would know better than to make a statement like that, which you ought to know is false.

Mr. BACON. I did inquire of two or three persons at the convention if they heard me make such a statement, and they did not recall it.

Mr. MANN. You said, however, in your address in St. Louis that "four of the members of this committee have declared that they will permit no action on the part of the committee upon any bill which is before them until definite action is taken upon this particular bill," relating to the Cooper-Quarles bill?

Mr. BACON. I think I did make that statement, which I did from statements made to me by the gentlemen.

Mr. MANN. I do not ask who the four members are. You were here this morning when we reported a number of bills without opposition?

Mr. BACON. I hardly think it would be proper for me to give the names. It was stated to me in private conversation.

Mr. MANN. I am not asking for it. You probably believed that statement?

Mr. BACON. Yes.

Mr. MANN. You made it?

Mr. BACON. Yes.

Mr. SHACKLEFORD. Did you make that from talking with members themselves?

Mr. BACON. I think I made it in an address.

Mr. SHACKLEFORD. But did you derive your information from talking with these four members?

Mr. BACON. Yes, sir.

Mr. SHACKLEFORD. I desire to ask you if Mr. Shackelford, of Missouri, was one of them?

Mr. BACON. No, sir; he was not.

Mr. TOWNSEND. When was that address delivered?

Mr. MANN. In October, last fall, just before the election. Now, the fact is that the Cooper-Quarles bill was the bill drawn by the attorney of the Pennsylvania Railroad Company in all of its features, is it not?

Mr. BACON. It is, as I have said before, a redraft of the bill which the late Judge Logan, general counsel of the Pennsylvania Railroad, originally drew, with some changes and modifications.

Mr. MANN. Of not any importance, however, you say?

Mr. BACON. The most important one was the one which I mentioned.

Mr. MANN. The others are not of any importance?

Mr. BACON. The others are principally verbal changes, with the view of making it clearer and more specific and less liable to misconception.

Mr. MANN. And yet, because the members of this committee were

not willing to report that bill without a hearing, a bill drawn by the attorney of the principal railroad company of the land, you and your secretary denounced this committee as railroad representatives.

Mr. BACON. I never have characterized the members of this committee, nor the members of Congress, as railway representatives.

Mr. MANN. I have just read to you what you stated. Both you and your secretary characterized members of Congress as railway representatives, under the influence of the railways, and opposed to making any change whatsoever in the power of the railroads to fix rates, because we would not report without hearing a bill drawn by the general counsel of the Pennsylvania Railroad Company. Do you think that that was fair to the members of the committee?

Mr. BACON. That bill had been before this committee, in the bill that was introduced by Mr. Wanger of the committee, after having been before the Senate for some two or three months, I think, and both the Senate committee and House committee had been holding hearings for two months upon that, together with the other bills. The principles contained in that bill were substantially the same as those contained in the Corliss bill, which was the House bill upon the same subject; but our committee upon negotiation with the Pennsylvania Railroad Company officers accepted the Elkins bill as a substitute for the Corliss bill, the Corliss bill having embraced several provisions that were not embraced in the Elkins bill. We waived those other provisions and accepted the Elkins bill in its place, the provisions of the Elkins bill, I say having been already included in the Corliss bill, which had been the subject of investigation.

Mr. MANN. In other words, you went over to the railroad bill, and because the committee would not follow you fast enough you say that we are under the influence of the railways?

Mr. BACON. I have not said any such thing, Mr. Mann.

Mr. MANN. I am very glad if you will say you did not say that. When I read it to you a while ago you would not say that you did not say it.

Mr. BACON. The question has often been put, is not Mr. So-and-so under the control of the railroads, and I have denied it. I have said that they are actuated by their own views and sentiments in regard to legislation, and that I believe they are doing it honestly. I have said that repeatedly.

Mr. MANN. I am very glad to know that. Personally I have always considered you a gentleman of high standing and honor, but I must say that when I saw that you and Mr. Barry had flopped over to a railroad bill and then proceeded to denounce the Members of Congress because they did not chase you up on the bill that I had some doubts about the honesty of one of you.

Mr. BACON. You would be surprised, and probably some of the other members of the committee would be surprised, if you knew to what extent I have kept back certain elements, certain interests, in regard to this legislation, which I have done with as much energy as I have used in bringing forward those that sought reasonable and proper and suitable legislation.

Mr. MANN. Did you not during that summer after the revised Elkins bill was agreed to endeavor to have that become the law?

Mr. BACON. I did; yes, sir.

Mr. MANN. I was invited to attend a dinner at the Union League

Club by the Chicago Board of Trade members of this association, who insisted that I should support the revised Elkins bill. I laughed at them when they read to me the pooling clause in that bill and told them that it had as much chance as a snowflake in Hades. But you were in favor of it?

Mr. BACON. You understand—or I should explain—that in the arrangement with the Pennsylvania Railroad officials it was distinctly understood that our organization would stand entirely neutral in relation to the pooling provision; that we would not oppose it, and they could not expect us to advocate it, because our convention had taken no action upon that particular subject.

Mr. MANN. And yet Mr. Chadwick and Mr. Lyons, now the treasurer of your association, at this Union League Club dinner informed me that at your request they were urging me to support that bill in the committee, with the pooling clause in it. Would you deny that you made such a request to them?

Mr. BACON. I say we supported the bill, but with the distinct understanding that we were not favorable to that section.

Mr. MANN. Do you think this committee would have been wise to have reported that bill favorably to the House simply because you favored that bill—to have reported it to the House without hearing?

Mr. BACON. I do not think the committee would be wise to report any bill because I advocate it or recommend it or because any other individual did so. I suppose the committee has to determine for itself upon the wisdom of any bill which it has to report.

Mr. MANN. Now, that is preliminary, of course, as to what the committee should do. I want to direct your attention to the proposition as to whether this committee should be denounced by the officers of your association, because, without hearings, they did not report a bill which originally was drafted by the general counsel of a railroad company.

Mr. BACON. It has not been the intention of the association or of any of its officers to denounce this committee or any committee of Congress.

Mr. MANN. Well, your intentions and your acts are widely asunder.

Mr. BACON. We have simply stated what we understood to be the facts of the case.

Mr. MANN. Now the truth is Mr. Bacon, I think you will admit that while your secretary was denouncing this committee for non-action, we did report a bill at your request last winter, now called the Elkins law.

Mr. BACON. I do not understand the House committee reported that bill.

Mr. MANN. Well, then, you are mistaken, because the House committee did report the bill. I reported it in the House by direction of the chairman. The Elkins law——

Mr. BACON. You are speaking now of the final Elkins law that was reported and passed?

Mr. MANN. The Elkins law that was passed?

Mr. BACON. That was simply one section of the original Elkins bill, but not very materially changed.

Mr. MANN. Was that a section that you wished enacted in the law?

Mr. BACON. We wished that as much as we did any other section.

Mr. MANN. And we did report that bill?

Mr. BACON. Yes.

Mr. MANN. Was that showing that we did not wish to consider any proposition of this sort?

Mr. BACON. We have given the committee great credit for the prompt reporting of that bill and its action in relation to it, as well as that of the House, has been highly appreciated.

Mr. MANN. I would be very glad if some time at your leisure you would call the attention of this committee to any place where you have ever given the committee credit for anything, except being under railroad influence.

Mr. BACON. I have done it hundreds of times, Mr. Mann.

Mr. MANN. I have read everything that I have ever received from you, clear through from beginning to end, and I have never found a line or suggestion of that sort.

Mr. BACON. I am very glad to know you have done so——

Mr. MANN. I have, and I have been profoundly instructed very often, too.

Mr. BACON. But I have written and said a great deal which has never come to the knowledge, probably, of any of the members of the committee.

Mr. MANN. I do not really see how it is possible, because we get so much from you. Now, if you will permit me to draw your attention a moment to the real subject. In a statement before this committee two years ago Mr. Knapp, the chairman of the Interstate Commerce Commission, used this language:

Under the present law the carriers exercise without restraint the initiative in rate making. They are free to put in just such tariffs as they see fit. They are under no legal restraint whatever in that regard, and there is no proposition to change the law in that respect. I do not advocate, and so far as I am aware no member of the Commission has ever advocated, that the initiative in rate making should be taken away from the carriers and given to the Commission or any other tribunal.

And then——

Now, all that is proposed is that in such a case as I have named, in order to give the Commission jurisdiction at all there must be a formal complaint served on the carriers, opportunity for them to answer, and a full hearing conducted, with all the formality of a judicial inquiry. Then, if the Commission in such case and upon the facts thus disclosed, reaches the conclusion that the rate in question is wrong, it shall have authority to name the rate which it thinks would be right to be put in place of the one in controversy.

I think you have also in a number of cases stated that what your committee wanted was power where a rate was found to be unreasonable that the Commission should have authority to determine what the rate should be to take its place. Now, I wish you would tell us just what your object is.

Mr. BACON. That is the precise thing that we want, but in the fixing of any rate there are other rates so closely related to it that it is absolutely essential that they should be considered in connection with it; and for that very reason the Elkins bill which read originally "a rate" was changed and the words "rate or rates" were substituted, following out the arrangement with Judge Logan, to whom I referred; and so the bill reads as it now stands "rate or rates."

Mr. MANN. "Freight"—your great publication, "Freight"——

Mr. BACON. Don't call that our publication, please.

Mr. MANN. I do, because "Freight" is the power behind the whole movement at present.

Mr. BACON. We have no interest or relation whatever to that publication.

Mr. MANN. Your committee has decided that "Freight" ought to be sent and referred to every person interested in the subject.

Mr. BACON. Our committee has been asked to indorse it and it has declined to do so.

Mr. MANN. You have indorsed it?

Mr. BACON. Not as a committee. I have recommended it.

Mr. MANN. I will show you that later.

Mr. BACON. I have recommended it being taken and read by every receiver and shipper in the United States, and I hope that will be the case, because it contains a great deal of valuable information for that class of people.

Mr. MANN. I want to call your attention to what you have asked for in print. In "Freight" the editor says:

We do not advocate conferring on the Commission the original rate-making power, but merely the power when a rate is complained of as being unfairly high or unjust, to decide what rate is fair.

That is what "Freight" says. Your secretary, Mr. Barry, the manager of your association—

Mr. BACON (interrupting). Excuse me, but does not the bill speak for itself in respect to that?

Mr. MANN. Well, we are considering the subject-matter.

Mr. BACON. We might save a little time by referring to citations.

Mr. MANN. I have one or two others here I would like to call your attention to;—also the President's message on the same subject—which are not handy but which I will call your attention to later.

In a circular of information which you have sent out recently, as I recollect it, you have stated that you do not wish the power conferred of rate making, but that when a rate on freight is found unreasonable that the Commission shall have authority to fix the rate. Did you not recently prepare a synopsis of the Quarles-Cooper bill and send it out through the country?

Mr. BACON. A year ago, or thereabouts, I did; yes, sir.

Mr. MANN. And in that synopsis did you not omit any reference to rates, and simply say rate?

Mr. BACON. I do not recollect; but if so it was wholly unintentional. I can not now see the distinction between the fixing of a rate and the fixing of rates, because the two must go together. It is a very rare case in which a single rate is questioned.

Mr. MANN. You do not see any distinction between conferring the power to fix a rate and the power to fix rates?

Mr. BACON. Most cases which come up embrace more than one rate. They necessarily embrace more than one rate in the case of discrimination in tariff rates, which is the great cause of complaints on the part of commercial men. It is the two rates from a given point to two different points—competing points—which constitute nine-tenths of the cases that have come before the Interstate Commerce Commission, and if the word "a" has been used it has been used simply in its generic meaning.

Mr. MANN. Well, I get a great many requests from people in my city, sent at the solicitation of your association, in which they ex-

pressly say to me that they think the Interstate Commerce Commission ought to have the power to fix a rate, but they do not wish to confer upon the Interstate Commerce Commission the power to fix railroad rates generally.

Mr. BACON. That is precisely the position of our committee. The fixing of rates generally has never been advocated by the committee, and I do not know that it has been advocated by any body of business men.

Mr. MANN. The power to fix rates is disclaimed generally by your committee?

Mr. BACON. Yes; emphatically.

Mr. MANN. And the power to fix rates is disclaimed generally by the Interstate Commerce Commission?

Mr. BACON. It is; emphatically.

Mr. MANN. You are acquainted, of course, with the case that went to the Supreme Court in which they stated that the Interstate Commerce Commission did not have the power to fix freight rates?

Mr. BACON. Yes.

Mr. MANN. You have read that decision frequently, I suppose?

Mr. BACON. Yes.

Mr. MANN. How many rates did that one decision determine?

Mr. BACON. I could not say definitely. I have the impression that it was somewhere between 200 and 300 rates, but Chairman Hepburn stated that—

Mr. MANN (interrupting). Do you know that that decision fixed the freight rates on every class of commodity, on every article in the southern classification, between Chicago and Cincinnati, and every point in the South, east of the Mississippi River and south of the Potomac and Ohio rivers, that that one opinion and decision did that?

Mr. BACON. I knew it fixed the rates to a large number of points in the southeastern territory. Whether it fixed the rate to all points or not I do not know.

Mr. MANN. Did you know it fixed the rate to every place in the South, south of the Potomac and Ohio rivers?

Mr. BACON. No.

Mr. MANN. And upon every article of freight?

Mr. BACON. It may have been so, and if you so state I shall not question it.

Mr. MANN. Well, the decision of the Supreme Court determines that question. That was under the authority which you are now seeking to put upon the Commission, where in one order they fix the rates to one quarter of the country, as the Supreme Court said, without much hearing.

Mr. BACON. Without what?

Mr. MANN. Without much hearing.

Mr. BACON. The case was a long time before the Commission, I recollect.

Mr. MANN. The Supreme Court said in that case—I never had the pleasure of reading the testimony of the Commission—that there was practically little evidence taken upon the subject of the rates—what should be the rates; and yet in that case the Commission, under the power, which you say you want, to fix a rate, and not rates generally, undertook to fix the rates to every point in the South upon every

article in a classification. Now, do you think they ought to have that power?

Mr. BACON. I will say in reply to that, Mr. Mann, that that embraced the system of rates in effect from Cincinnati and Chicago to points in the southeastern territory, upon merchandise and manufactures, which, on investigation, had been found to be very much higher for a less distance than rates on the same commodities—

Mr. MANN. Oh, well, you are seeking to argue the question as to what rates should go into effect—

Mr. BACON. I am not arguing; I am stating the facts. [Continuing] very much higher than the rates from the Atlantic seaboard to the same points, and in the course of the investigation it developed that those rates had been agreed upon by the several lines interested as a matter of regulating the east and the west bound business with the view of securing through merchandise and manufactures from the East and the agricultural products, necessarily, from the West, in order to afford traffic both ways and give them loaded cars both ways, and they were fixed—

Mr. MANN. So that—are you through?

Mr. BACON (continuing). They were fixed by means of a commission appointed by the several railroads in interest, and from the statements they made it is clear that that was the sole object they had in view in fixing the rates as they did, so very much higher from the western points to the points through the Southeast than from eastern points; and that being the case, the Commission found, when it went into the investigation, that they were unreasonably high compared to rates from the seaboard, and consequently they could do no less than to order them all changed. If, in an investigation of certain rates, there are 200 or 300 or 2,000 or 3,000 found to be wrong, why should not every one of those rates be changed as much as one of them?

Mr. MANN. So that, as a matter of fact, you are in favor of giving to the Interstate Commerce Commission the power to determine the rates upon every article between every point in one complaint?

Mr. BACON. When found upon investigation to be wrong and when related to each other in such a way that they can not be separated.

Mr. MANN. That might cover the whole United States in one complaint.

Mr. BACON. Hardly that.

Mr. MANN. Let us see whether "hardly that" or not. The ground of complaint in the case we refer to, the maximum rate case, was that rates from Western points to the South were too high as compared with rates from Eastern points to the South, as you have said.

Mr. BACON. That was it.

Mr. MANN. Now, when the Interstate Commerce Commission passed on rates from Western points to the South that necessarily affected rates from the Eastern points to the South, did it not?

Mr. BACON. That affected them by making them relatively equal.

Mr. MANN. Oh, it affected them by compelling the railroad companies to change them?

Mr. BACON. To be sure.

Mr. MANN. Which would also require the Interstate Commerce Commission to pass upon whether they were proper rates or not?

Mr. BACON. That is what I mean—

Mr. MANN. That would affect also the rates from New York to Chicago, necessarily?

Mr. BACON. It would have no relation to rates from New York to Chicago.

Mr. MANN. I am afraid you have not studied the rates fully enough, although I will admit, as you say, that you are not an expert.

Mr. BACON. I beg your pardon; rates from New York to Chicago have no relation to rates to the Southwest.

Mr. MANN. I beg your pardon; I say they have a very strong relation. What is the rate on first-class freight from New York to Chicago?

Mr. BACON. I could not say at the moment.

Mr. MANN. I will inform you. Seventy-five cents a hundred pounds.

Mr. BACON. That was my impression, but I was not clear upon it.

Mr. MANN. The rate to every other point between New York and Chicago is based on that.

Mr. BACON. Yes; not only that but the points between the Missouri River and New York.

Mr. MANN. Well, you are mistaken about that, Mr. Bacon.

Mr. BACON. Well, perhaps I am.

Mr. MANN. Rates from New York to Chicago are the basis upon which they make the rates from all other points between New York and a line drawn from Chicago to St. Louis, or the Mississippi River.

Mr. BACON. Yes, sir.

Mr. MANN. That is the case. Now, if the Interstate Commerce Commission endeavors to pass upon a rate from New York to Chicago it must also at the same time pass upon the rate to every other point within that territory, must it not?

Mr. BACON. That of itself would come about; that would be a natural result of it.

The CHAIRMAN. Excuse me. If there is no objection, we will continue at half-past 10 to-morrow morning.

Mr. SHACKLEFORD. I would like to ask one question. You said that this Quarles-Cooper bill was drafted by counsel for the Pennsylvania Railroad after conference with your committee?

Mr. BACON. Not the Quarles-Cooper bill; the original Elkins bill, of which this is a redraft.

Mr. SHACKLEFORD. This is really a redraft, substantially so?

Mr. BACON. Yes, sir.

Mr. SHACKLEFORD. Did the Interstate Commerce Commission enter into the conference in reference to that?

Mr. BACON. No, sir.

Mr. SHACKLEFORD. Were they consulted about it?

Mr. BACON. It is possible they were consulted after it was done, or at least that they were advised of what was done. I think they were, but they had no part in the conference.

Mr. SHACKLEFORD. They had no part in the manufacture of that bill?

Mr. BACON. No, sir; none at all.

Mr. SHACKLEFORD. Were they consulted as to whether it was satisfactory before it was introduced?

Mr. BACON. I think not before it was introduced. That, however,

I am not certain about. Excuse me—I recall now the bill was previously introduced before this conference between representatives of the Pennsylvania Railroad Company and the commercial organizations. Consequently any reference of it to the Commission was subsequent to its introduction.

The CHAIRMAN. There is one matter I would like to have you explain, if you will. You used the language, "the arrangement that was made with the officials of the Pennsylvania Railroad Company." What did you mean by that?

Mr. BACON. The individuals?

The CHAIRMAN. "The arrangement that was made?"

Mr. BACON. It was an understanding that was reached at the conference which I have mentioned, a conference for the purpose—

The CHAIRMAN. That you would mutually support that bill?

Mr. BACON. Mutually support the bill, with the distinct understanding that we would not support the pooling section, and that we would not oppose it.

Mr. SHACKLEFORD. That is, you would not oppose it?

Mr. BACON. Well, we were neutral.

The CHAIRMAN. You could not be neutral when you were advocating the passage of a bill that contained that clause. You were advocating the passage of the bill?

Mr. BACON. Yes; as a whole.

The CHAIRMAN. And then you were advocating the pooling clause in that bill as well as the other clauses?

Mr. BACON. Whenever the question was put to us as to that clause we said we were neutral.

The CHAIRMAN. But you wanted it passed?

Mr. BACON. We did not care whether that section was passed or not.

The CHAIRMAN. But it was in there, and to pass the bill it was necessary to pass it.

Mr. BACON. We were willing that it should be passed as a whole.

The CHAIRMAN. You were anxious that the bill should be passed as a whole, were you not?

Mr. BACON. I would not say that. We were anxious that the bill should be passed.

The CHAIRMAN. You were anxious that the bill should be passed, and this was a part of the bill?

Mr. BACON. To be sure.

The CHAIRMAN. This was a part of it, and under that situation you were just as anxious to have the pooling clause as any other, as a whole?

Mr. BACON. I could not say that, Mr. Chairman. I think I should say to the contrary, in fact; that the commercial organizations almost unanimously dissent from the proposition of pooling, and consequently our committee—

The CHAIRMAN. But you, as their agent, were here advocating the passage of a bill that contains the pooling clause.

Mr. BACON. The committee submitted it to the constituent organizations and obtained their assent to the bill.

The CHAIRMAN. You speak of the arrangement made—

Mr. BACON. Perhaps I should have said more properly, "the understanding."

The CHAIRMAN (continuing). That means something active, does it not?

Mr. BACON. Perhaps I should have used the word "understanding," the understanding that was had between us.

Mr. ADAMSON. Do you say that the authorities of the Pennsylvania Railroad agreed to support the provision for rate making?

Mr. BACON. The first section of the bill.

Mr. ADAMSON. And you say they agreed to it?

Mr. BACON. Not only agreed to it, but they proposed it; they originated it. That is the first section of the bill, and is also the first section of the Cooper bill.

Thereupon at 11.55 the committee adjourned until Monday, January 9, 1905, at 10.30 o'clock a. m.

MONDAY, January 9, 1905.

The committee met at 10.50 o'clock a. m., Hon. William P. Hepburn in the chair.

Mr. LOVERING. Mr. Chairman, I want to object to the methods and manner of carrying on this examination. There is entirely too much personality in it. I am here as one of the committee, to get at facts, and it is a matter of very little consequence to me whether I am one of four men who have been accused of holding up the bill. I do not think that it amounts to anything for us to know it, or to go into that part of it. As to any questions that will elicit facts, I shall be very glad to join with the committee in eliciting such information, but beyond that I want it to be understood that I absolutely disclaim any part or parcel in the manner of questioning that we underwent—that was followed out at the last session. That is all I have to say.

Mr. RICHARDSON. I did not hear distinctly all of your remarks, Mr. Lovering. You were too far from me for me to hear distinctly. I caught the drift of it, I believe, that you thought that there was altogether too much personality and too little reference to the bill in these examinations.

Mr. LOVERING. That was the gist of it.

Mr. RICHARDSON. I am disposed to agree with you.

Mr. BACON. I would like to say that a gentleman is here this morning from Boston, Mr. George F. Mead, who is an officer of one of the important commercial organizations, who has got to go away at 11 o'clock this morning, and if the committee will be pleased to hear him for a few minutes I will give way to him.

Mr. MANN. I think that he ought to be heard. We have heard Mr. Mead before, and we would be very glad to hear him again, so far as I am concerned.

Mr. RICHARDSON. Just one suggestion, if you please, along that line. I would like to know, as a member of the committee, whether to-day is going to be the only time that we will have for the further examination of Mr. Bacon. I am very anxious to ask Mr. Bacon some questions myself, and an intimation was given at the last adjournment of the committee that Mr. Bacon would be here only to-day.

Mr. BACON. That is a mistake, Mr. Richardson. I intend to remain here a week or ten days yet.

Mr. RICHARDSON. Very well; then that is all right.

The **CHAIRMAN.** If there is no objection the committee will hear briefly from Mr. Mead.

STATEMENT OF MR. GEORGE F. MEAD, OF BOSTON, MASS.

Mr. MEAD. I thank you for your courtesy. I represent the National League of Commission Merchants, and also the Boston Fruit and Produce Exchange, a body which, at their annual meeting on Saturday last, passed resolutions in favor of the Cooper-Quarles bill, and re-affirmed their former action.

Mr. Chairman, I appeared here three or four years ago in behalf of the Nelson-Corliss bill. At that time I gave some testimony relative to the inroads made upon our business by the private car lines, and the chairman of the committee was anxious to get some information at that time. I think that the events since that time have confirmed my statements, namely, that Armour & Co., and those interests, have gone into the lines of business in which the fruit and produce men are engaged to such an extent that at the present time the car-line company known as "Armour & Co." controls the price of the perishable fruit products of this country; and perhaps no other men have suffered more, and no other business has suffered as ours has, from the exactions and abuses of these private car lines. I take it that whatever bill your committee would see fit to report, if your committee should report a bill, should include a remedy for those abuses.

In 1900—and this was all brought out at the hearing in Chicago in June and in October—these facts were proven. Our fruit is brought from Michigan at one tariff charge, and there was a tariff of \$20 a car for icing. In 1893 Armour came upon the field with an exclusive contract, and at the present time, as appears from the testimony, they will not put their cars upon any railroad without an exclusive contract with that railroad, and instead of having in vogue a rental of \$55 for a car, that enables them with the mileage they receive to charge \$70 a car from Michigan to Boston. At the same time that Armour was engaged in the fruit and produce business he was engaged also extensively in handling pineapples and deciduous fruits, potatoes, apples, and, in fact, almost any kind of fruit in which he thought there was a possibility of making a dollar, so that we have this situation confronting us: Mr. Armour can go into Michigan and buy a carload of potatoes at the same price that I pay there and bring it on to Boston, and the tariff being \$70 a car, he can sell it in Boston and make a profit of \$35, and I would lose \$35 on my carload.

But one of the worst features of that contract was this, that the railroad with which he makes an exclusive contract binds itself to furnish to him full information in regard to every other car on the line. So if I have a car of fruit on the line they telegraph to Armour when that car was shipped, who shipped it, to whom it was going, when it left and when it is due in Boston, and the contents and value of the car, which practically makes the railroads of the country trustees of our business; and it has come to such a pass that the business interests are demanding some relief. It can not go on any longer. We

have either to go out of business or else give up our business to Messrs. Armour & Co.

The CHAIRMAN. Will you explain, now, to the committee how this legislation that you are asking for would relieve this situation that you have spoken of?

Mr. MEAD. It would relieve it in this respect, that other refrigerator cars might be put upon those lines where Armour & Co.—

The CHAIRMAN. But I am asking you now where, under the provisions of this bill, you would get the relief that you seek?

Mr. MEAD. You mean under the provisions of the Cooper-Quarles bill?

The CHAIRMAN. Yes. I understand you to say that your association on Saturday expressed their approval of the Cooper-Quarles bill?

Mr. MEAD. Yes, sir.

The CHAIRMAN. Now, if you will explain to this committee how relief would come to you from the provisions of this bill the committee would be glad to have that information.

Mr. MEAD. I will not read the resolution, because it is the same as we have passed in previous years.

The CHAIRMAN. It is just like a great many of those things we receive from gentlemen who evidently have great interest in this matter and who ask us to vote for this bill. They complain of rebates, and they complain of preferences, and they complain of discriminations, and ask us to vote for this bill that relates solely to rate making. Now, explain to us, if you please, any relation that the provisions in this bill have that would ameliorate the situation that you have complained of.

Mr. MEAD. There is a clause in this resolution, Mr. Chairman, which I will read, as it is very brief:

This exchange also urges that the jurisdiction of the Interstate Commerce Commission be extended to include all charges or practices of refrigerator car lines of other companies or agencies having contracts with railroad companies in respect to care and transportation of freight, vegetables, and farm products: Therefore, be it

Resolved, That this exchange hereby respectfully petitions Congress for the passage of the Cooper-Quarles bill or to indicate such legislation as will, in its judgment, accomplish the purpose indicated above.

The CHAIRMAN. Now, you have asked us to pass the Cooper bill as a means of relief, in the alternative of something else, and you have taken an interest in this matter—this is the second time that you have been before the committee—and you have undoubtedly studied this question and ought to know, and we ask you now to inform us how this bill will in any way relieve the situation of which you complain?

Mr. MEAD. The abuse of the private car lines is but one feature of it. We believe that the Cooper-Quarles bill might be amended in the manner to which I have referred.

The CHAIRMAN. Yes.

Mr. MEAD. And that would give adequate relief by making them common carriers, and then they would come under the jurisdiction of the Interstate Commerce Commission. At the meeting in Chicago and at the one recently held there was one of the most flagrant instances of this abuse brought out. There was a charge on a carload

of freight of \$35, and the Armour Company charged under an excessive contract \$45 to ice and refrigerate that car. The shipper refused to pay it, and they have sued him for it. Now, we claim that the railroad companies should undertake to transport what we give them for shipment in safety.

The CHAIRMAN. There is no doubt about that. No one here will dispute that. Is there not a discrimination there against you and in favor of Armour & Co., and is that not prohibited by law to-day?

Mr. MEAD. Yes, sir.

The CHAIRMAN. And can you not go to-day before the Interstate Commerce Commission and compel them to act?

Mr. MEAD. I do not so understand it. And I want to say this, that the ordinary business man to-day does not propose to spend his time and money in the preparation of a case and take it before the Interstate Commerce Commission when, after everything has been decided in his favor, he has got to go to the courts to have the order of the Commission enforced, as the average time to put a case through the courts after it has been decided favorably by the Interstate Commerce Commission is four years. In the meantime the railroads hold us up and we are subjected to delay and expense; so that at the present time, under the present conditions, we do not feel like bringing a case to take before the Commission.

The CHAIRMAN. Do you expect to get a self-operating law?

Mr. MEAD. No, sir; we ask for this power—

The CHAIRMAN. Are you not asking for such a law as that when you advocate such a law as this will be?

Mr. MEAD. I do not so understand it.

The CHAIRMAN. Every law has to be invoked.

Mr. MEAD. Yes, sir; but may I cite a concrete example of the working of this?

Last summer a session of the Interstate Commerce Commission was held in Boston. We complained of an unfair rate of one of the railroads there from Harlem River to Boston. They charged \$80 on a carload there, and on the same train they brought a carload of beef for \$30. They prorated on the beef and not on the peaches. It did not take the Commission long to determine that that was an unreasonable and unjust rate. They suggested that \$50 would be a just rate. This power that we are asking to have given to the Interstate Commerce Commission is, as I understand, the power to revise an unfair rate, and when the Commission says that \$50 would be a fair rate for a carload of peaches between those two points, that that rate should stand until it has been passed upon by the courts.

The CHAIRMAN. Now, you are talking about an entirely different subject. I can see that this argument is entirely pertinent to your purpose. But you were talking a minute ago about these discriminations in rates, and about the discriminating contracts that were made, and asking us, inferentially at least, to pass this bill as a remedy for that.

Mr. MEAD. One of the reasons for asking for that is illustrated by the statement of Armour's attorney in Chicago. When asked about the rates of the Central Traffic Association Armour said: "We are not amenable to the interstate-commerce law. We send a check to the railroad company to pay the freight, and they take out what they see

fit and turn over the balance to Armour & Co., and we have nothing to say in this matter."

I am simply saying, Mr. Chairman, that something might be added to this bill to cover the private car lines, which constitute the greatest abuse we have and suffer from. Of course, we all recognize the necessity of taking some action as to railroad rates, because we believe unless something is done the business interests of this country will rise up and demand more drastic legislation than is contained in the Cooper-Quarles bill. Within a week I have heard a railroad president in Massachusetts go before a meeting and ask this question: "Do you want the railroad rates all over this country fixed by five men who know nothing about it?" That is not the question at all. That is not what we ask for. What we ask is simply the power to revise an unfair rate, and pending the decision of the court that that rate shall stand; and we feel that circumstances are such that some relief is necessary at once. The interests of the country which we represent are large and great. That is the feeling that we have, that something must be done, and some great relief must be given. We do not feel that this is an unfair bill to the railroads. We have suffered this injustice since 1897, and if all these terrible consequences are going to ensue, such as the railroads claim will ensue, and the mere agitation of this bill is going to bring such results to the railroads, why have they not shown some sympathy for the business men, who have been suffering from this since 1897? We feel that we are entitled to relief, and that at once.

Now I shall be glad to answer any questions.

Mr. RICHARDSON. Did you not read the President's message, and did he not make some reference there to the trouble that you complain of—private cars?

Mr. MEAD. Yes, sir; I think he sees the absolute necessity of action along that line.

The CHAIRMAN. Have you read the bill introduced a few days ago by Mr. Stevens, of Minnesota?

Mr. MEAD. I did not read it carefully. I read it through, but not carefully. I think I know, in a superficial way, what it is.

The CHAIRMAN. Does that meet your approval, so far as you have judgment on the subject?

Mr. MEAD. No, sir; I would rather, at the present, see the Cooper-Quarles bill pass, and then see more time taken for a comprehensive bill that would embrace whatever the situation demanded. But the business interests of the country at the present time almost entirely demand some relief now. We feel that at the present time Armour & Co. are under no regulation whatever. I can not imagine how the railroads of the country have a right to license Armour & Co. to prey upon us, and to transfer the functions of a common carrier to a private individual, practically allowing them to hold us up by the throat and demand what they see fit.

Mr. MANN. Has not the Interstate Commerce Commission held that under the present law it had authority to dispose of that evil?

Mr. MEAD. I think not. I asked Commissioner Prouty at the end of our hearing in Chicago in June as to what relief he could give. He stated that he questioned whether the Interstate Commerce Commission had the power. But the revelations there were so startling

that Congress, he said, could not help but give us relief. The revelations made there and the showing made in that investigation were so startling that he said Congress could not help but give us relief.

Mr. MANN. Did not they hold in that Michigan peach growers' case that they had jurisdiction to continue the case to see whether the railroad companies and the shippers would adjust their differences?

Mr. MEAD. In answer to that I can say the hearing was adjourned from June. The hearing pertained only to Michigan, was limited to Michigan, and the Commission stated at that time, "If you will put in another petition we will open this whole broad question all over the country." They did that, and the second hearing was held in October. The final result of the June hearing was that they would give Armour & Co. until October or November 1, I think, and then if that practice was not discontinued they would take some other action; but no action has been taken up to the present time.

I do believe that the Interstate Commerce Commission have more power than they have exercised. I believe if they had been more aggressive in exercising some of the power that they have it would have afforded us some measure of relief.

Mr. ADAMSON. Armour & Co. use their own cars exclusively to ship over all railroads?

Mr. MEAD. They use their own cars exclusively under these exclusive contracts.

Mr. ADAMSON. The railroads must take their cars and then further their business all the time in the use of them

Mr. MEAD. And if they do not do that they induce the withdrawal of that traffic. They have been able to make some exclusive contracts, as in the case of the Marquette Railroad, for their beef shipments, and whenever they find a weak sister among the railroads they make an exclusive contract with them. In the case of the Marquette Railroad it was shown that they made a low contract over that railroad, though it was not so direct, so as to be able to get their beef in—

Mr. ADAMSON. How far do you think Congress should go in conferring power upon the Interstate Commerce Commission to make fix rates?

Mr. MEAD. The Interstate Commerce Commission are supposed to represent the public and the shippers; and I understand that when the interstate commerce act was passed it was supposed that they were to pass upon the railroads and the interstate commerce of the country. The President has paid a great tribute to the Massachusetts corporation laws in his desire to extend them to interstate commerce.

Mr. MANN. The Massachusetts laws are not the only thing from our State that the President pays a great tribute to.

Mr. MEAD. Thank you, sir. I understand this, that the Commission has power over interstate traffic. They have now the power to say what is a fair rate, after investigation, and after all interests have been heard, and I do not believe in giving the Commission the power to fix initial rates.

The CHAIRMAN. What do you mean by "initial rates?"

Mr. MEAD. I believe that the railroad companies of the country should fix their rates, as they do at the present time. The traffic managers of the railroads have that in their power to-day, to fix rates, and no one shall supervise them. They can make them as unfair and as



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Mr. MANN. Oh, one man often forms a national organization.

Mr. MEAD. He might be such in name, but not in fact.

Mr. MANN. It is not restricted. Any organization under the Cooper-Quarles bill, any association, or anyone can bring a complaint before the Interstate Commerce Commission, and under the Cooper-Quarles bill the Commission could extend its jurisdiction to that, and, pending hearing, could enter an order upon the case which I have stated to you. Do you think that power ought to be given to the Interstate Commerce Commission?

Mr. MEAD. I do not think any such power is asked for as you have stated. As to a specific case and an investigation, the merits, of course, of the larger cities and smaller towns being taken into consideration and a finding made upon that complaint, that is all right. I do not think that an effort would be made to fix rates all over the country upon that basis.

Mr. MANN. Are you in favor of the bill, which covers the power which I have just suggested, which confers that power to fix the rates, to make them higher or to lower them, anywhere the people choose to complain, including in that order the entire United States?

Mr. MEAD. I should say no. If you mean that after complaint has been heard, that, of course, was confined to the locality.

Mr. MANN. Oh, well—

Mr. MEAD. It would not be pertinent for that Commission to make a finding there that would apply all over the country.

Mr. MANN. You are familiar, of course, with the fact that on one complaint taken before the Interstate Commerce Commission, and afterwards decided by the Supreme Court of the United States, the New York Board of Trade and the Philadelphia board which corresponds with it and the San Francisco board which corresponds with it filed complaints under which the Interstate Commerce Commission was asked to enter orders affecting the rates on every railroad in the United States that touches at the seaboard?

Mr. MEAD. You mean differential rates?

Mr. MANN. No, sir; I do not mean differential rates at all. I mean actual rates. And you know, do you not, that they entertained jurisdiction of the case?

Mr. MEAD. Yes.

Mr. MANN. Well, now, do you think that they ought to have that power, and, if you do, do you call that revising rates or initiating rates?

Mr. MEAD. I suppose that would be revision of rates, if they substituted for one in vogue, fixed by the traffic managers, another fixed by themselves. I should call that revision of rates.

Mr. MANN. That is what I say. So that it is impossible for the Interstate Commerce Commission to initiate rates now. Rates are already in existence, and a change of the existing rates would be merely a revision of rates.

Mr. MEAD. I think so.

Mr. MANN. It was a disclaimer I desired.

Mr. MEAD. I do not see how the railroad commission, however showing they may be, would have sufficient knowledge to fix such rates.

Mr. TOWNSEND. Do I understand you to say that the only object of the Cooper-Quarles bill, as you understand it—that is, the only

unjust and as extortionate as they see fit. They can break men and firms and States and localities by those rates.

The CHAIRMAN. What I wanted to attract your attention to was the question as to how far you think Congress ought to go in conferring power on the Interstate Commerce Commission to make rates. You say that you do not believe in allowing the Interstate Commerce Commission to initiate rates?

Mr. MEAD. Yes, sir.

The CHAIRMAN. I mean the rates as initiated already in this country to-day?

Mr. MEAD. Yes, sir.

The CHAIRMAN. And that is an absurdity, to talk about initiating rates, in the ordinary sense of the words?

Mr. MEAD. Yes, sir; of course.

The CHAIRMAN. Now, you say to fix rates—you said a while ago "to fix a rate"—how far should the Interstate Commerce Commission have the power to go? Should they fix rates in a certain section, or should they have the power to fix the rates in the whole United States in one order?

Mr. MEAD. No, sir; power to make a rate after a rate has been shown to be unfair, unjust, and unreasonable; to fix a rate and have it put in force and maintained until the railroads have gone to the Supreme Court and that rate has been upset.

The CHAIRMAN. Now, do you mean that they should have the right to fix a rate upon the moving of a quantity of merchandise or property at one time from one point to another point—one transaction? That is what you mean, is it?

Mr. MEAD. Yes, sir; and only after a complaint has been entered and a full hearing has been held upon that.

The CHAIRMAN. Yes.

Mr. MEAD. And just as a sample of that, take the case of the Harlem River and Boston rate. They claimed that \$50 was a fair rate, and \$50 was a much larger proportion of the whole than the other roads received from the peach fields to the Harlem River. Pending a decision of the court, the \$50 rate should stand until it was shown that it was unjust to the railroads. It would be simply reversing the situation of to-day, under which we have been suffering since 1897.

Mr. MANN. Let me put this case to you. There is a dispute in the country as to what should be the relative charges on carload rates and less than carload rates. It is to the interest, say, of the larger cities to have carload rates very much less than rates on smaller quantities—that is, on carload quantities. It is to the interest, say, of the hamlets to have the same rates for carloads and for less than carloads. Now, would you have the power conferred upon the Interstate Commerce Commission, if a dozen or three or more merchants in a hamlet should organize an association of retail merchants, to give them authority to file a complaint with the Interstate Commerce Commission asking the Commission, first, to revise the classification, so that carload rates and less than carload rates should be put in the same class, and then to fix the rates on those all over the United States on that one complaint?

Mr. MEAD. No, sir. It seems to me that your premise is wrong there. I do not think that 10 or 12 little hamlets would form a national organization.

an increase in the third class, and from that throughout the entire province that the railroads occupy?

Mr. MEAD. Yes, sir.

Mr. RICHARDSON. Then, if the Interstate Commerce Commission were passing upon a complaint that related to freights of the third class, would it not be right and proper, relatively speaking, that it should affect all the rates within that railroad province? Would you say that it should pick out one single rate, one single charge, and affect that, and not affect those that related to that class of freight? Would you not expect the Interstate Commerce Commission to be common sense—

Mr. MEAD. Sure.

Mr. RICHARDSON (continuing). And businesslike, and would you not expect them to apply it from a common-sense business standpoint? If the Commission found that all the freights related to class 3 related to each other and depended upon each other would it be right, for instance, to take just one axe or a lot of axes that were in that rate and affected each other and not allow it to the general trade matters that would have to enter into their finding? At the present time, when they change the classification they change it from the fourth to the third class, and that raises or lowers the railroad charges, as the case may be.

Mr. MEAD. They change it so as to raise the rates tremendously at times.

Mr. RICHARDSON. For instance, you take the rate from New York to Atlanta. It is \$1.14 per 100 pounds, and second class is 96 cents, and the third class is 83 cents, and the fourth class is 74 cents or 75 cents, and then come the fifth and the sixth class. It comes on down gradually. Now, do you not believe that when the railroad classified that freight they classified the freights that related to each other?

Mr. MEAD. Without doubt.

Mr. RICHARDSON. Without doubt. Now, if a complaint was filed before the Interstate Commerce Commission under this bill we are considering now and the Commission were to find that there were rates or that there were charges—or the petition included rates—that were not relevant to other rates, do you not think that they would allow an amendment to that bill and knock out the charges that were not related to the things in the complaint, being sensible, practical men?

Mr. MEAD. Certainly. We have to trust somebody. At the present time we simply trust the railroads and the traffic managers, without any supervision whatever.

Mr. RICHARDSON. And the Commission under this bill, as I understand it—and I want to get your idea about it and to get at the merits of this bill—has first the right to have an investigation, and after having challenged certain rates and finding them to be unreasonable and unjust and unfair, you think that the Commission ought to have a right then to say what is a just and a reasonable rate?

Mr. MEAD. Yes, sir.

Mr. RICHARDSON. And that rate which they fix is subject to revision by the courts, after thirty days' notice, and so on?

Mr. MEAD. Yes, sir.

Mr. RICHARDSON. And if within sixty days an appeal is taken from the district or the circuit court to the Supreme Court of the United States your rate still goes on, the rate which the Commission has fixed still goes on, and remains in effect?

Mr. MEAD. Yes, sir.

Mr. RICHARDSON. Now, right then and there, do you not think that the objection that has been so universally made throughout the country, that the Supreme Court refused to pass upon a rate for the future—that is the objection, and that is the only objection that the Supreme Court of the United States refuses to pass upon a rate for the future—that that question is met right there where this Cooper-Quarles bill gives the Commission the right to fix a rate temporarily until the Supreme Court of the United States passes upon it, and when the Supreme Court passes upon it the Supreme Court finds a rate already fixed, and it is not passing upon a rate for the future? Do you not think that that avoids the trouble?

Mr. MEAD. That is what we desire to accomplish under this Cooper-Quarles bill.

Mr. MANN. Did I understand you to say in answer to Mr. Richardson that you believe that if the Interstate Commerce Commission should fix a rate from New York to Atlanta on one commodity it would be necessary, or that they would have the right, under the same complaint, to fix the rates not only from New York to Atlanta, but from New York to all other points in the South?

Mr. MEAD. Oh, no, sir. They would have to consider only what was complained of in that specific complaint. There might be, of course, other things to be taken into consideration.

Mr. MANN. Oh, yes. Let me see if I do not get your view. I think your views are nearly in accord with what my views are on this question. You will pardon me if I seek to elucidate the point. I take it from what you say that you are in favor of giving this power to the Interstate Commerce Commission to permit a complaint to be filed by some person who is interested, say, and let the freight rate on some commodity or certain commodities between certain points named be unreasonably high, and you would permit the Interstate Commerce Commission to decide what shall be the reasonable rate on that commodity or that class of commodities between those points named, of course taking into consideration in the hearing what rates are the basis, but simply entering an order as to what the rates shall be according to the petition in that regard.

Mr. MEAD. Yes, sir.

Mr. MANN. That would not give to the Interstate Commerce Commission the power, upon a complaint, to revise—using the term “to revise” in place of “initiate”—rates generally?

Mr. MEAD. That would be a very disturbing factor, I should say, if they had that power.

Mr. MANN. Are you aware that the Cooper-Quarles bill would confer upon the Interstate Commerce Commission the power to fix rates generally on one petition anywhere; that the Cooper-Quarles bill would permit one petition to be filed by any person or association in the United States, alleging that all the rates in the United States or one part of the United States were too high and asking the Interstate Commerce Commission to fix the rates, and that under

the Cooper-Quarles bill the Interstate Commerce Commission would have the power to revise the classifications, fixing the rates generally, and put them into operation, and that they would have to remain in operation without any authority of the railroad companies to change them unless permitted to do so upon further hearing by the Interstate Commerce Commission?

Mr. MEAD. I did not suppose that they had the power to do that under one complaint.

Mr. MANN. That is the power that is proposed to be conferred upon the Commission.

Mr. MEAD. I did not suppose that the committee would be considering a bill embodying such a power.

Mr. MANN. That is the Cooper-Quarles bill.

Mr. MEAD. I am not a railroad lawyer, but simply a plain business man, and knowing the past and knowing the conditions to which we have been subject for some years past.

Mr. RICHARDSON. Do you not understand the Cooper-Quarles bill to go one step further and to provide that after the Interstate Commerce Commission has investigated a rate and found it unreasonable and has fixed another rate, and the case has gone up to the district court, then either party, as soon as it goes to that court, has the right to send for witnesses in order to investigate to see whether the Commission has fixed a just rate?

Mr. MEAD. Yes, sir; I understand it so.

Mr. RICHARDSON. After that they call witnesses and bring them around and they investigate in the court and have the testimony of the witnesses as to whether the Commission has fixed a fair and reasonable rate?

Mr. MEAD. Yes, sir; I so understand it. It seems to me what we desire to ask for is this, that the present conditions be reversed, so that pending the review of the case we shall not be subjected to the old rates, but the railroads shall be unable to keep these rates in effect from three to six years after the passage of an order, and so that the further time which it takes to get one of these cases through the courts and define what is right shall not be spent under the old conditions. The ordinary business man can not afford to prepare a case and have it held up that length of time. During that time we should have relief. We are asking simply that the conditions be reversed, and if the railroads then want to keep their cases in the court four or five years, all right. They will find a means of reaching the cases quicker than that.

Mr. MANN. Are you aware that under the Cooper-Quarles bill the Interstate Commerce Commission could of itself, on its own initiative, cause an investigation to be made of all the classifications of rates, and of all the rates in the United States, and enter an order which would have to remain in force until passed upon by the Supreme Court of the United States, unless some circuit court should decide upon the face of it that it was plainly or clearly unlawful or unreasonable?

Mr. MEAD. I do not know what the powers of the Interstate Commerce Commission are at the present time regarding their own initiative instituting proceedings under their own initiative. I understand that what we are asking by this bill is that this shall be done on a complaint.

Mr. RICHARDSON. And if within sixty days an appeal is taken from the district or the circuit court to the Supreme Court of the United States your rate still goes on, the rate which the Commission has fixed still goes on, and remains in effect?

Mr. MEAD. Yes, sir.

Mr. RICHARDSON. Now, right then and there, do you not think that the objection that has been so universally made throughout the country, that the Supreme Court refused to pass upon a rate for the future—that is the objection, and that is the only objection that the Supreme Court of the United States refuses to pass upon a rate for the future—that that question is met right there where this Cooper-Quarles bill gives the Commission the right to fix a rate temporarily until the Supreme Court of the United States passes upon it, and when the Supreme Court passes upon it the Supreme Court finds a rate already fixed, and it is not passing upon a rate for the future? Do you not think that that avoids the trouble?

Mr. MEAD. That is what we desire to accomplish under this Cooper-Quarles bill.

Mr. MANN. Did I understand you to say in answer to Mr. Richardson that you believe that if the Interstate Commerce Commission should fix a rate from New York to Atlanta on one commodity it would be necessary, or that they would have the right, under the same complaint, to fix the rates not only from New York to Atlanta, but from New York to all other points in the South?

Mr. MEAD. Oh, no, sir. They would have to consider only what was complained of in that specific complaint. There might be, of course, other things to be taken into consideration.

Mr. MANN. Oh, yes. Let me see if I do not get your view. I think your views are nearly in accord with what my views are on this question. You will pardon me if I seek to elucidate the point. I take it from what you say that you are in favor of giving this power to the Interstate Commerce Commission to permit a complaint to be filed by some person who is interested, say, and let the freight rate on some commodity or certain commodities between certain points named be unreasonably high, and you would permit the Interstate Commerce Commission to decide what shall be the reasonable rate on that commodity or that class of commodities between those points named, of course taking into consideration in the hearing what rates are the basis, but simply entering an order as to what the rates shall be according to the petition in that regard.

Mr. MEAD. Yes, sir.

Mr. MANN. That would not give to the Interstate Commerce Commission the power, upon a complaint, to revise—using the term “to revise” in place of “initiate”—rates generally?

Mr. MEAD. That would be a very disturbing factor, I should say, if they had that power.

Mr. MANN. Are you aware that the Cooper-Quarles bill would confer upon the Interstate Commerce Commission the power to fix rates generally on one petition anywhere; that the Cooper-Quarles bill would permit one petition to be filed by any person or association in the United States, alleging that all the rates in the United States or one part of the United States were too high and asking the Interstate Commerce Commission to fix the rates, and that under

to investigate that matter, and in case they found that it was unreasonably low to raise it?

Mr. MEAD. I think that if such a case as that should occur—I can hardly conceive of it, but I think if it should occur—it would be only justice to the railroad to make a fair rate. I do not see why they should not have the right, under the construction of the statute given by Mr. Mann, to change a rate under their own initiative. The statute says that the rate must be unreasonable. That is all the business man wants. This question has come to such a pass that we find that relief must be given somewhere. We are looking to this committee to pass a bill that shall not be in conflict with the interstate commerce act. The railroads absolutely hold to-day the power to make or break localities or men without any supervision whatever being given over their rates. We hold that it is an unfair thing to the public, and the Interstate Commerce Commission should represent the interests of the public and of the business community on this question.

Mr. MANN. Do I understand you that the business interests of the country are on the point of ruin?

Mr. MEAD. Many men have been ruined.

Mr. MANN. That is Boston, or generally?

Mr. MEAD. I can cite you to specific instances of the way the thing works.

Mr. MANN. I am talking of business interests generally.

Mr. MEAD. In our business; yes, sir. The Armour Company sent out a notice, dated August 22, that after the 1st of September no goods carried in their cars should be owned by the Armour interests or people. He testified in Chicago that he loaned a man \$400,000 to go into business. He may go into our line of business to-morrow, and cut our throats. He has the power to do it. He has the power to raise or lower these rates absolutely in his own hands. Take, for instance, some shipments to the city of Worcester. Armour & Co. had all the information about those shipments, they knew the time they were shipped and when they were due, and they knew the cost of the car when it was bought in the open market, and if that carload of freight was due on Wednesday, they would put a carload of freight in there on Tuesday and fill the market, and when the carload of freight got in there on Wednesday they found the market cut from underneath them.

Mr. MANN. The tribunal to which you ought to go is not the legislature, but the Executive branch of the Government, because all those things which you have suggested are positively prohibited by law, now under heavy penalties.

Mr. LOVERING. Would the railroads welcome a change regarding the contracts with regard to the refrigerating cars?

Mr. MEAD. I am not, of course, empowered to speak for the railroads. I do know this, that the largest railroads in this country absolutely refused to make an exclusive contract with Armour & Co. They have used all kinds of persuasion and threats with the Pennsylvania and the New York Central railroads. They say "We absolutely refuse to make a contract with you. We believe that we should haul any car or any refrigerator car tendered to us." I have no right to speak for the railroads, but personally I believe that the rail-

roads of the country would welcome such a change and a chance to escape from the domination of Armour & Co. Armour & Co. hold over those railroads to-day the threat of the loss of their business. They say "You must make an exclusive contract with us or you will lose so many carloads a week of freight." Railroads have made exclusive contracts with Armour & Co. under such a threat as that. If the railroad is a comparatively weak one the traffic manager of the road has to have freight or he loses his position. The president of the road has to show results or he loses his position. At the hearing in Chicago the Atchison Railroad put a man on the stand who actually swore that they paid a rebate of 25 cents.

MR. ADAMSON. You think that they need protection against Armour & Co.?

MR. MEAD. I think that Mr. Armour uses his immense business to force the railroads into these exclusive contracts.

MR. ADAMSON. It seems to me that they might, while they are making so many contracts and agreements among themselves, combine against the robber to protect themselves.

THE CHAIRMAN. Now, you have spoken a number of times of "exclusive contracts." Do you understand them to be numerous? Are there many of those contracts?

MR. MEAD. Yes, sir; more than we have any knowledge of. We know of the instance of the Marquette and Michigan Railroad. Those contracts were produced at the hearing in Chicago.

THE CHAIRMAN. Do you know of any other exclusive contracts?

MR. MEAD. Yes, sir.

THE CHAIRMAN. Where are they?

MR. MEAD. In Georgia. There are other refrigerator cars that do the work at less cost to the producer and also with a less consumption of ice. They do work that the Armour Company cars can not do; and yet the shipper can not use those cars because the Armour Company has an exclusive contract. I wrote to the railroad commission of Georgia and asked them if they would furnish me with the names of the roads which had exclusive contracts, and I found that they had exclusive contracts with every railroad bringing peaches out of Georgia. The shippers of Georgia are prevented from getting a better rate and a better car simply because Armour uses no cars but his own.

MR. ADAMSON. Have you that letter from the railroad commission of Georgia?

MR. MEAD. That letter is filed with the Interstate Commerce Commission in Chicago.

MR. ADAMSON. We would like to have a copy of it here.

MR. MEAD. You can have a copy of it. I have had several letters from them. I had a letter from the secretary of the railroad commission of Georgia, and in one or two instances he simply sent me the letter which he had received in reply from those railroads that had exclusive contracts.

MR. ADAMSON. If you have a copy of that, I would like to have that filed here.

MR. MEAD. I will have to send that to you.

MR. LOVERING. Are these contracts for private cars entirely for refrigerating cars—these exclusive contracts?

Mr. MEAD. Practically so. Armour & Co. some years ago saw the possibilities of getting practically an absolute control of the refrigerator-car service of the country, and Armour to-day practically controls it. He can give us cars or not, as he sees fit. He has it in his power to ruin the shippers of Georgia, so far as their peach business is concerned. He can refuse to-day, under one pretext or another, to put his cars into Georgia.

Mr. LOVERING. And ruin the railroads too?

Mr. MEAD. Yes; and the railroads would have no way to transport that freight to-day from Georgia—that is, in a safe way. They could go back to their box cars, or whatever equipment they might have, and get ready for the service; but there were this last year in Georgia thousands of baskets of peaches which lay on the ground and rotted because the Armour equipment was not there to take care of them. That is, according to their statements. Armour, if he wanted to do so, could go into the market next year and buy up their peaches and shut out those producers. He did that in Michigan. He bought up all the potatoes there. He had the shippers at his mercy, and he could buy the potatoes at his own price simply because they could not get the cars to ship them out except from him.

Mr. TOWNSEND. Are you talking about the testimony given at the hearing up there?

Mr. MEAD. That particular part of it was given there.

Mr. TOWNSEND. Where do you get that particular information?

Mr. MEAD. From potato shippers and from men in the potato business who are unable to get cars. That has all been published in our trade papers, columns and columns of it.

Mr. RICHARDSON. Do you know what would be the freight from Georgia if Armour did not have these contracts? What is the difference between those charges that Armour makes on those refrigerator cars and what would exist if he did not have the contracts? Do the producers suffer?

Mr. MEAD. Of course. The refrigerator car gives them the facility for getting their freight to distant markets, and to get that facility we are willing to pay a fair price. I myself paid \$100 for icing a car from Michigan to Boston. In addition to what Armour got on that he received a mileage of \$25, so that for that one car he received \$125. We claim that that is an exorbitant charge.

Here is another instance. The railroad companies of the country have put all icing facilities into the charge of Armour & Co. Up to within two months Armour & Co. had absolute charge of all icing, by reason of the cars, at Jersey City. It was in the power of Armour to ice a car for me there or not, as he saw fit. He charged me, an outsider, \$5 a ton for icing a car, and he charged the Pennsylvania Railroad \$2.50 a ton. After this hearing this last year the Pennsylvania Railroad saw the injustice of that. There the icing of the produce on every car at Jersey City was in the hands of Armour, and it was a very easy matter for him to forget to ice my car, if he chose to do so, and to send it through in bad condition.

Mr. MANN. Let us do justice even to Armour. Under the contract with the railroad company was he not required to ice that car? You say that he could ice it or not, as he chose.

Mr. MEAD. You can call it a requirement or a privilege. He had

the privilege of charging every other man a dollar and a half a ton on his ice.

Mr. MANN. Was it not in the contract with the railroad company, was there not a requirement that he should ice those cars when they needed to be iced?

Mr. MEAD. I have no doubt of that.

Mr. MANN. He could not do as he pleased about it?

Mr. MEAD. Absolutely as he pleased.

Mr. MANN. By breaking his contract?

Mr. MEAD. He would not have to break the contract. It is very easy for him to forget and let a car go through without being iced. It has been done by competitors, and the car would go to its destination in a worthless condition.

Mr. RICHARDSON. From your statement about the matter is it not manifest that Armour & Co. were carrying that freight from Georgia cheaper than other railroad freights were carried? If not, why did they not go and seek the other railroads which were not under contract with Armour?

Mr. MEAD. There are no other railroads going out of there.

Mr. RICHARDSON. He has got them all?

Mr. MEAD. Yes, sir; Armour & Co. have exclusive contracts with every railroad bringing peaches out of Georgia.

Mr. RICHARDSON. You mean that the railroads go and agree upon a price, and then they bring those peaches out all for the same charge?

Mr. MEAD. The railroads have nothing to do with Armour's charge.

Mr. RICHARDSON. He has got all the railroads?

Mr. MEAD. All of the railroads bringing the peaches out of Georgia; but they have nothing to do with the Armour charge whatever.

Mr. RICHARDSON. He pays the railroads whatever he pleases and fixes the charge?

Mr. MEAD. I do not think you understand the working of it.

Mr. RICHARDSON. I think I do.

Mr. MEAD. Possibly you do.

Mr. RICHARDSON. Yes.

Mr. MEAD. When we receive a carload of peaches, coming from Georgia, our freight bill is rendered to us, \$90, \$80, \$50, \$60, \$70, making in all an aggregate of \$350. When I send my check to the Boston and Albany Railroad they take out their part and pass over to Armour the balance. I have no means of knowing what Armour's charge was. As a matter of fact, on this carload that I spoke of, there was an overcharge of \$3.50 on that car. They rendered me an extra bill afterwards of \$5. They said: "Mr. Mead, this extra \$5 is because the car was diverted." Finally Armour admitted that that was wrong, and they remitted \$5 to me.

What we complain of is that we have no way of knowing the charge. Armour files no price list and no tariff with the Interstate Commerce Commission, and I do not believe that since the Elkins bill was passed these charges have been legally collected. I do not believe that they can charge any more than the tariff filed with the Interstate Commerce Commission. I believe that we can collect those charges.

But the freight charge from Georgia is one question and the Armour bill is another thing entirely. We do not know how much

the charge will be on an Armour car. The rate to Boston is \$60, and that is added to the freight charge, and they could overcharge me \$25 if they saw fit. When my check goes to the railroad company that is taken out and passed over to Armour.

Mr. RICHARDSON. Do you mean to say that you can not protest against that bill?

Mr. MEAD. No, sir. Armour says, "You pay that bill as it is;" and they order the railroad to collect it for them; and this case in Chicago shows this, that an Armour charge was put on a car of \$25 for icing a car, and the freight was \$35, and Armour went to the party and said, "Unless you pay that freight charge you will not be allowed to have credit with the Illinois Central Railroad any longer." The man had paid all that he owed to the Illinois Central. He had paid that bill. He said to him, "I will have you taken off the list of shippers."

Mr. TOWNSEND. Unless he paid the ice bill?

Mr. MEAD. Yes, sir.

Mr. MANN. And did they do it?

Mr. MEAD. Yes, sir; the Illinois Central sent them a letter telling them that they would be taken off of the credit list if they did not, but when they found that Cohen would make a fight they changed that and allowed them to pay the freight bill separately.

The CHAIRMAN. You have spoken of \$100 for icing. What would have been a legitimate charge for that service?

Mr. MEAD. Of course that would require a knowledge of the number of time the car was reiced en route from Missouri to Boston. If you mean the actual charge, that is one thing, and if you mean the charge made by Armour of \$4 a ton or \$2.50 a ton, it would of course make a difference. I should say that \$35 or \$40—\$30 or \$35 ought to cover the cost of icing that car.

The CHAIRMAN. And the rest was extortion?

Mr. MEAD. Yes, sir.

Mr. ADAMSON. I want to understand your statement. As I understand it, you said in effect that you had a statement from the railroad commission of Georgia?

Mr. MEAD. Yes, sir.

Mr. ADAMSON. Stating that every railroad in and out of Georgia—

Mr. MEAD. Not every railroad.

Mr. ADAMSON. All those that handle peaches?

Mr. MEAD. Yes, sir; four railroads handle the peaches from Georgia.

Mr. ADAMSON. Stating that they had contracts with Armour & Co. guaranteeing the exclusive privilege to use their cars furnished by them for hauling peaches out of Georgia?

Mr. MEAD. Yes; and another reads this way: "No other cars will be allowed upon our line." Those railroads are the Southern Railroad, the Central Railroad of Georgia, the Seaboard Air Line, and the Coast Line. Those are the four lines.

Mr. ADAMSON. In your associations, such as you and Mr. Bacon represent, do you have any lawyers among them?

Mr. MEAD. Do we have lawyers?

Mr. ADAMSON. Yes, sir.

Mr. MEAD. Not among our men of business.

Mr. ADAMSON. Do your associations employ lawyers?

Mr. MEAD. Yes, sir; the National League of Commission Merchants had one employed in Chicago. We had one employed on the June case, and also for the October case.

Mr. ADAMSON. Do you not think that if you would employ as good lawyers as the railroads do to look after your interests you would make better progress in forcing existing interests to do what is right than you do?

Mr. MEAD. We find it pretty hard to make headway. Of course the railroads have legal talent employed by the year, and they have the best lawyers that they can get.

Mr. ADAMSON. They employ lawyers and go to the courts, and you demand of the Government to do your litigation?

Mr. MEAD. Not that. But if we have an Interstate Commerce Commission, supposed to represent the shippers and the public, we want that Commission to represent them and guard our interests.

Mr. MANN. You think that the Interstate Commerce Commission ought to be a very active prosecuting body, and also should be the judges of what should be done at the end of their prosecution?

Mr. MEAD. I do not know that the Cooper-Quarles bill embodies that, because the right is given the circuit court to revise. They can simply say, "Pending the situation as it is to-day."—

Mr. MANN. What right is given the circuit court under the Cooper-Quarles bill?

Mr. MEAD. The right to pass on the fairness of a rate. I do not understand that that gives any right to the railroads, under that.

Mr. MANN. The rate goes into effect before the circuit court has a chance to pass upon it?

Mr. MEAD. Yes, sir; they can upset that rate if there is any injustice being done a railroad. They can change it.

Mr. MANN. After a hearing?

Mr. MEAD. Yes, sir.

Mr. MANN. But the rate is in effect already.

Mr. MEAD. Yes, sir. Why should we suffer for four or five years the way we have been doing—

Mr. BACON. The rate is not in effect, as you will recall.

Mr. MANN. I mean that the rate is in effect at least sixty days after the order is promulgated.

Mr. BACON. Thirty days is allowed for review. If no application is made for review, the order is in effect. If application is made for review, then sixty days are allowed. If in the meantime the circuit court reverses the order, that ends it.

Mr. MANN. Of course we all understand very well that the circuit courts of the United States, or any other courts, do not pass upon these great questions which may involve the fixing of rates over a whole territory, in sixty days' time. You say that it takes four years' time to settle one of these cases. Meanwhile a rate would be in effect. So that practically there is no appeal—

Mr. MEAD. I say that the average case, after it has been passed upon favorably by the Commission and taken to the courts for the finding to be enforced—the average time to get a case through the courts is four years.

Mr. RICHARDSON. Right there; is it not a fact that the object that you have in view, and which these associations which you

represent have in view, is to give effectiveness to legislation now existing?

Mr. MEAD. Sure. That is the main object.

Mr. RICHARDSON. That is your object?

Mr. MEAD. Yes. We are not trying to upset any—

Mr. MANN. Just one question. The rate on first-class freight from Chicago to New York or from Chicago to Boston is the same, what is the difference?

Mr. MEAD. I can not tell you.

Mr. MANN. It is the same. It is a little less to Philadelphia and a little less to Baltimore and a little less to Newport News, which are the great seaboard shipping points. Now, do you think that when a man brings a complaint in respect to the rate from New York to Chicago or from Chicago to New York that the Interstate Commerce Commission on that complaint not only ought to have the power to fix the rate from Chicago to New York, but at the same time to fix an increased rate from Chicago to Boston and a decreased rate from Chicago to Philadelphia and from Chicago to Baltimore and from Chicago to Newport News on all classes of freight?

Mr. MEAD. I do not know that the passage of this bill would change things in that regard. That is a question of differentials between those cities. I do not know that this affects their powers in that regard. That is an indirect matter and a matter upon which I am not very well posted.

Mr. MANN. Do you believe that the Interstate Commerce Commission, on a complaint in reference to rates from Chicago to New York, ought to have the power to increase the railroad rate from Chicago to Boston and make the railroads charge a higher rate from Chicago to Boston than they do from Chicago to New York?

Mr. MEAD. I think if they did, if that bill was passed, they would soon find a complaint made to reduce it.

Mr. MANN. I asked a very simple question and I would like you to answer it. I think it is very important.

Mr. MEAD. It is an easy matter, of course, for the lawyers of this committee to frame these hypothetical questions and put them to us business men, and upon the spur of the moment we can not consider them in all their bearings.

Mr. MANN. I do not wish to embarrass you.

Mr. MEAD. I am not a railroad man or a railroad attorney, of course, and I am very careful about answering those hypothetical questions. They may be designed to draw a special line of answers—

Mr. MANN. That is designed for getting information from a man who has studied the subject. I would like to have your opinion. If you have not an opinion, I do not wish to press you. I would like to have your opinion as to whether the Interstate Commerce Commission, on a complaint concerning rates from Chicago to New York, could have the right on that complaint to say that the rate from Chicago to Boston is too low and to increase the rate from Chicago to Boston?

Mr. MEAD. I do not see how they would have the power, on a specific complaint regarding rates from Chicago to New York, to do that.

Mr. MANN. There is no doubt whatever that they would have the

power under the Cooper-Quarles bill. The question is whether they ought to have the power.

Mr. MEAD. It seems to me that would be a specific complaint as to the rate between Chicago and New York, and not as between Chicago and Boston.

Mr. BACON. The Commission certainly could not go outside of the complaint under the Cooper-Quarles bill.

Mr. MEAD. I do not see how they could.

Mr. MANN. I have studied the Cooper-Quarles bill until I think I know as much about it as anybody else—

Mr. BACON. Could they go outside of the complaint?

Mr. MANN. It would permit anybody to intervene.

Mr. TOWNSEND. Would they not have to make a complaint and have hearings on that particular point you speak of?

Mr. MEAD. Yes, sir.

The CHAIRMAN. It is 12 o'clock. Mr. Dunnigan is here representing Mr. Hearst, and he has a request to make on his behalf.

Mr. DUNNIGAN. Mr. Hearst has a bill pending before the committee and wishes to appear before the committee and briefly present some original information on this, and also to have called some few people who wish to be heard on that bill and on the subject generally. He asks the committee if they will fix a time for that hearing.

Mr. RICHARDSON. We are looking into the whole subject, are we not?

The CHAIRMAN. Yes, sir; certainly.

Mr. DUNNIGAN. Then can you intimate when Mr. Hearst can appear and have his witnesses appear?

The CHAIRMAN. I have just learned that Mr. Spencer, who was to be here to-morrow, can not be here. Mr. Hearst would like to be heard before next week, if possible, when he has something else on his hands; and if the time is not limited he would like to begin next week.

Mr. FAULKNER. Mr. Spencer asked me to come down and state to the committee, Mr. Chairman, that he has been sick in bed for several days, and he said that he would report here this morning. He said that he would come, if it was the wish of the committee, to-morrow, and if it suited their convenience better; but he said that he was very weak and felt that he would hardly do himself justice, having just gotten out of bed, and if the time could be fixed on Thursday or Friday or any day thereafter, so that it would suit the convenience of the committee, he would prefer to appear then.

Mr. MANN. I do not know how far the committee will indulge me, but with the committee's consent I have quite a number of inquiries concerning the terms of this bill which I would like to have elucidated by Mr. Bacon, who I think is the best-posted man in this country on the bill.

The CHAIRMAN. We will go on, then, with this to-morrow, and if there is no objection the Chair would say in response to Mr. Hearst's suggestion that a week from to-day—Monday—we would be glad to hear him. And I would suggest that we hear Mr. Spencer on Wednesday.

Mr. LAMAR. The chairman of the State railroad commission of Georgia has written me a letter, which I received a short time ago, saying that a committee appointed by a commission that met at

Birmingham some months ago desires to appear before this committee in reference to legislation pending to increase the power of the Interstate Commerce Commission.

The CHAIRMAN. Then I would say that on the Tuesday of next week we would hear them.

Mr. DUNNIGAN. I would like to ask if Mr. Hearst can present the subject-matter that he has, and the arguments of attorneys to follow right after?

The CHAIRMAN. The committee will give a week from to-day to Mr. Hearst—give the day's session of the committee to him.

Mr. RICHARDSON. It has been suggested that Mr. Spencer shall be heard on Thursday instead of Wednesday.

Thereupon the committee adjourned until to-morrow, Tuesday, January 10, 1905, at 10.30 o'clock a. m.

Original.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, January 10, 1905.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. E. P. BACON—Resumed.

Mr. MANN. Before I proceed to ask you about the merits of the bill I wish to confirm the statement I made the other day as to there being a report that Mr. Barry was elected manager of the organization. Of course I have no means of knowing about that, and you have, but the November copy of Freight, which purports to contain a very full account of the proceedings, makes that statement. I do not know whether that has been called to your attention or not.

Mr. BACON. As I stated the other day, Mr. Barry was elected by the executive committee after the adjournment of the convention, and there was no reporter present. Mr. Barry was elected secretary.

Mr. MANN. And the report in Freight says, after stating that Mr. Barry was elected secretary:

Mr. Barry was also elected manager of the organization at Washington.

Mr. BACON. There was no election that termed him manager. There was no other election than that which I mentioned.

Mr. MANN. That is an erroneous statement by the reporter in Freight?

Mr. BACON. Yes. It was expected, as I said before, that he would be present at Washington and look after legislation in behalf of the executive committee.

Mr. MANN. In order that you may set yourself right before the committee in reference to the other statement in Freight, I read to you from the same report in Freight—referring to the statement that you were credited with saying that three-fourths of the Representatives in Congress owed their presence there to the influence of the

railroads—what purports to be a direct quotation of your words on this subject:

These Representatives are there to represent the railroads, and that is what we have to contend with in advocating reform legislation.

They put that in your mouth, using quotation marks, in this same report. If you care to say anything on that subject, I would be glad to hear it.

Mr. BACON. Those remarks having been wholly extemporaneous, I have no means of confirming or denying that statement.

Mr. MANN. You may have made that statement?

Mr. BACON. My recollection is not distinct in reference to it.

Mr. MANN. You do not wish to deny that you made the statement?

Mr. BACON. I have stated exactly the position in which it lies in my mind. If I had a distinct recollection in regard to it I would be very glad to give it to you in full. Anything I say I am prepared to stand by, but whether I said that or not I can not now say.

Mr. MANN. Now, do you believe that that is true—that that is a fact, I mean?

Mr. BACON. I do not, to speak candidly; I do not think I made such a remark. And I will say further that I have not had such an idea; I have not been possessed with such an idea.

Mr. MANN. I am frank to say to you that I was very much surprised that such a remark should be credited to you, because I have never found that you were in the habit of making statements of that sort.

Mr. BACON. You know how fond reporters are of changing what is said into something sensational, giving it a sensational effect, and I attribute this to that tendency.

Mr. MANN. Of course we all know that a reporter never misses an opportunity of changing language if the change will make a sensation.

Mr. BACON. That is what I refer to.

Mr. MANN. That is a part of their business.

Mr. BACON. I hope the reporters will pardon the allusion. They doubtless recognize the fact of it.

Mr. MANN. In the testimony which Mr. Kernan gave to this committee two years ago he made a statement like this: That there was no intention to ask that the Interstate Commerce Commission should have any authority over rates "except when its intervention is sought to pass upon a rate already made by the carrier and challenged by formal complaint." That, I understand, is still your position in a way?

Mr. BACON. That expression is used often in referring to this legislation and the word is used in its generic sense. I have often used it myself. The President used it in his message—a rate, "a rate that is challenged." But we all understand that when any rate is challenged there are liable to be rates so related to it that they must be combined with it.

Mr. MANN. The New York Board of Trade and Transportation, if I remember rightly, originally passed a resolution in favor of the Cooper-Quarles bill, or something of that sort.

Mr. BACON. No, sir; they never have.

Mr. MANN. At any rate, they adopted a report adverse to it, and I thought that they had reversed their opinion.

Mr. BACON. They adopted a report at a meeting about ten days ago, at which I had the honor of being present, criticising the Cooper-Quarles bill on account of certain language used in it which was not satisfactory to them. If you wish me to go into the details of that I will do so; but it seems to me to be a waste of time. But they did not declare against the bill as a whole.

Mr. MANN. What I wish to get at is this—and I consider you the ablest man upon the subject in the country—

Mr. BACON. I disclaim anything of that kind, Mr. Mann.

Mr. MANN. I want to get at the distinction between what the shippers are asking for and the powers which would actually be conferred by the language of the Cooper-Quarles bill, in the hope that with your assistance and with your knowledge we may be able to work out a measure in proper language which will fulfill the expressed wish of the shipping public.

Mr. BACON. I will be very glad to cooperate in that effort.

Mr. MANN. Now, the editor of Freight, I assume, speaks for the shippers, or at least he admits that he does. In referring to the action of the New York Board of Trade and Transportation he made this remark:

The objection raised against the proposed bill to amend the interstate-commerce act, as introduced by Cooper, of Wisconsin, is frivolous, in that it recites, incorrectly, that such legislation would confer the rate-making power on the Commission.

Mr. BACON. Mr. Mann, I beg to say that our committee is not in any way responsible for utterances in Freight or communications made to that publication.

Mr. MANN. I am not holding you responsible for anything there. What I want to find out is what the fact is. They say that the objection is frivolous, that it does confer the rate-making power on the Interstate Commerce Commission. Now, I understand from your language that you are not in favor of conferring generally upon the Interstate Commerce Commission the rate-making power.

Mr. BACON. The primary rate-making power, no. And I know very few men in the country that are in favor of it.

Mr. ESCH. That is, you do not want to give the Commission the initiative?

Mr. BACON. The initiative of making rates, no. I do not think there are ten men in this country, at least there are not ten men in this country within my acquaintance that desire anything of that kind. They simply desire that the power to correct the rate when it is questioned shall be vested in some competent body, and that the correction when found necessary can be immediately put into effect—that is, within a reasonable time.

Mr. MANN. The chamber of commerce of the city of Milwaukee has filed with this committee a copy of a resolution passed by it on this subject. One resolution reads as follows:

Resolved, That the chamber of commerce of the city of Milwaukee hereby petitions Congress to enact legislation empowering the Interstate Commerce Commission to determine, upon full hearing of all parties in interest, what change shall be made in a rate or practice found to be discriminative or unreasonable.

With the committee also is a very large number of resolutions passed by various organizations throughout the country, all in identi-

cally the same language, asking that the power be conferred upon the Commission to change, upon full hearing, a rate or practice. Now, do you understand that that means the power to change rates generally?

Mr. BACON. It means the power to change a rate complained of, and if more than one rate is included in the same complaint, necessarily that it shall pass upon those.

Mr. MANN. The President in his message to Congress made this statement:

I do believe that as a fair security to shippers the Commission should be vested with the power where a given rate has been challenged and after a full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place.

Do you understand from that language that the President means that the Interstate Commerce Commission shall have the power to change any number of rates upon one petition which the petition chooses to allege are unreasonable?

Mr. BACON. Mr. Mann, it necessarily follows that a number of rates involved in a particular rate complained of can be embraced and will be embraced in the same complaint, and if embraced in a complaint that the Commission can act upon and change them all. Everybody understands that. The commercial organizations have at least that idea and that expectation—that desire.

Mr. MANN. Do you think the President understood that when he said "to change a given rate and fix what shall be a reasonable rate to take its place," that he meant any number of rates, from 1 to 10,000?

Mr. BACON. I think the President had the same idea which I have stated to be the idea of commercial organizations; and I will say in that connection that I have had a number of interviews with the President during the last three years, probably not less than a dozen, and I think I know his mind very well.

Mr. RICHARDSON. Do you not think a fair and reasonable construction of that would be "rates related to each other?"

Mr. BACON. I think the Interstate Commerce Commission would not entertain a complaint that combined rates that had no relation to each other. I think if such a complaint were made it would be referred back for correction.

Mr. MANN. You sent out, I believe—you or the secretary—a synopsis of the Quarles-Cooper bill to various organizations—shipping organizations, freight organizations, mercantile organizations, etc.—throughout the country. Is not that the case?

Mr. BACON. We did; yes, sir.

Mr. MANN. Do you know whether this is a copy, an original copy, or a copy they printed of your synopsis? [Handing a paper to Mr. Bacon.]

Mr. BACON (after examination of paper). I do not.

Mr. MANN. That came from the Illinois Manufacturers' Association.

Mr. BACON. I could not say whether it corresponds with the one that was issued by the committee or not.

Mr. MANN. I may say I do not know whether it does or not, but the Illinois Manufacturers' Association sent to me for the Cooper-Quarles bill after they published this synopsis or sent it out, and I

presume they must have gotten the synopsis from some other source than the bill itself.

Mr. TOWNSEND. Is there not a way to get that synopsis, a true copy of it, if it is material?

Mr. MANN. I do not know that it is material at all. I simply wish to know whether this was what was sent out.

Mr. ADAMSON. I think we may assume it.

Mr. MANN. In the Cooper bill itself it says "rate or rates" in referring to the power of the Commission. The synopsis which was sent out gives to the Interstate Commerce Commission authority in this language:

Declaring any existing *rate* or regulation or practice affecting such rate complained of, and declaring what *rate*, regulation, or practice would be just and reasonable.

Now, in sending out a synopsis of the bill of that sort, would there be any special reason for cutting out the word "rates" and conveying the impression to an ordinary grammarian that you only intended to fix a special rate, and not confer power to fix rates generally?

Mr. BACON. I can not say whether this corresponds to the synopsis prepared by the committee or not, but if it does I should say that the common use of the term "correcting a rate" would be the reason for using that term in a synopsis. Whether it was done or not I don't know. If it was done it was not done, I should say, with any intention to mislead or with any expectation that there would be any misapprehension in regard to it.

Mr. MANN. You think it would not be misleading at all, as a matter of fact?

Mr. BACON. No, sir.

Mr. MANN. But still in the bill you take care to put in the word "rates" for fear it would mislead the courts?

Mr. BACON. When you prepare a bill you have to be careful to put in every word to avoid any misconception. When you prepare a synopsis you make it as short as possible.

Mr. MANN. The synopsis covers all that the bill covers in this respect, except you leave out the plural. Otherwise the synopsis in those provisions is as long as the bill.

Mr. BACON. It was intended to convey an exactly correct idea of every provision of the bill, and if the omission of the pluralizing of the word "rate" was made it was done without any thought that by any possibility anybody would have any misconception as to the meaning. Shippers and receivers everywhere use *rate* commonly to express *rates* in general.

Mr. Barry suggests to me that I wrote the synopsis, which was issued by the committee, myself.

Mr. MANN. With all due respect to you, that would not affect the question as to whether it would, in fact, convey a wrong impression, leaving out the very important and vital thing in the bill as to whether the power to fix rates should cover rates generally or whether it should cover *the* special rate complained of. Can not you see a vast difference between the authority to fix a rate and the authority to fix rates generally?

Mr. BACON. I can not see a particle of difference, because the power to fix a rate involves the power to fix rates brought before the Commission for consideration, related to the rate complained of.

Mr. MANN. In your statement two years ago before the Senate committee the question was raised as to the extent of the order to be made by the Commission under the Nelson-Corliss bill, and this question was asked you and you made this answer [reading]:

Senator DOLLIVER. Does the order of the Commission contemplated here apply to the individual only or to the classification?

Mr. BACON. Simply to the individual complaint. The complaint may, however, be in relation to an unjust and unreasonable rate or to an unjust and unreasonable classification.

The Commission takes into consideration the relation of that rate to other rates and determines largely upon that relation as to the reasonableness or unreasonableness. It has no power to order a general reduction. It can only order a change in a particular rate complained of in each individual case. The Commission can go no further than to change the rate in the particular instance where complaint has been made.

Mr. MANN. Now, did you intend to convey the impression by that testimony that the Interstate Commerce Commission should have authority to lower a whole lot of rates?

Mr. BACON. I had no distinction in my mind whatever between the words "a rate" and "rates."

Mr. MANN. When you say in your testimony "authority to change the particular rate complained of" you mean by that authority to change all the rates which may be named in the petition?

Mr. BACON. In the complaint; yes, sir.

Mr. MANN. Without regard to the number?

Mr. BACON. Without regard to the number; yes, sir. Subject to the discretion of the Commission, whether they have a definite relation to each other, and should be considered together.

Mr. MANN. By what authority does the Commission determine the discretion?

Mr. BACON. The law fixes the scope of complaint.

Mr. MANN. That is not discretionary with the Commission—as to what jurisdiction each shall maintain?

Mr. BACON. It is discretionary with the Commission whether it shall take up a complaint or not.

Mr. MANN. Where do you find that in the law?

Mr. BACON. In the original act.

Mr. MANN. In what way is it discretionary? The original act gives a shipper absolute authority to file a petition. The Commission has no discretion as to whether it shall maintain jurisdiction over that.

Mr. BACON. In section 13 of the act it does provide, if in the judgment of the Commission it is thought best to investigate the matter—some language to that effect.

Mr. MANN. That is an investigation on the Commission's own motion.

Mr. BACON. I think it relates to the whole thing.

Mr. MANN. I think when you read it you will change your mind, because it only relates to an investigation on the Commission's own motion. There is no discretion given to the Commission as to whether it shall entertain a petition filed by a shipper, or an association or an organization or anybody else, almost.

Mr. BACON. I would like to have section 13 of the act read.

Mr. MANN (reading):

That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

Mr. BACON. Does not that clause which says that they may conduct the investigation in such manner as they deem best give them discretion?

Mr. MANN. As to whether they shall conduct an investigation at all?

Mr. BACON. Yes.

Mr. MANN. It certainly does not, Mr. Bacon.

Mr. BACON. Is not the discretion vested in a court in relation to a complaint sufficient to warrant the Commission in doing the same thing?

Mr. MANN. The court has no discretion as to whether it shall hear a lawsuit or not.

Mr. BACON. But it often requires a complaint to be amended.

Mr. MANN. It permits a complaint to be amended, but the complaint must show upon its face, otherwise the Commission is not required to proceed. But when the complaint shows an evil on its face, within the provisions of the law, it is made the duty of the Commission to investigate.

Mr. BACON. I think that same discretion would give the Commission authority, if it deemed the complaint unduly extensive and containing points that did not properly relate to each other, to refer it back for amendment. I think the discretion vested in the Commission in relation to investigations is broad enough to admit of their doing that.

Mr. TOWNSEND. Mr. Mann, what does that sentence mean there—

If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, etc.

Who is to judge whether there is any reasonable ground?

Mr. MANN. That is a matter to be decided on the face of the complaint as to whether a violation of the law is made out upon the face of the complaint.

Mr. ADAMSON. Whether it states the case?

Mr. MANN. Yes; or if at any time on the proof it should appear that there was no case they could abandon it if they wished to. But

certainly nobody proposes to confer on anybody the absolute authority to determine for itself whether it shall favor one shipper and refuse to hear the case of another shipper.

Mr. BACON. No; but it may enter into the details of the complaint, and if it regards it as inconsistent or unreasonable it can certainly refer it back and require it to be amended.

Mr. MANN. Undoubtedly there is no question about the power to amend.

Mr. BACON. The Interstate Commerce Commission is supposed to be a body of discretion and judgment, and it is not likely that it would entertain any such ridiculous complaint as would involve rates that had no relation to each other.

Mr. MANN. That would bring up the question—which I do not wish to take up just now—as to whether all rates do not have some relation to each other. In your judgment the Interstate Commerce Commission also uses the singular where it means the plural—because in their last report they say that what they want is authority to correct the rate, “upon proof that a particular charge is greater than should in reason be exacted.” You think by that that they mean the power to fix rates generally and not confine themselves to the particular charge?

Mr. BACON. I think they use it in the generic sense, the same as I have referred to; but the Commission can not entertain any rate not included in the complaint, and it can not make a change in the rate of its own volition, but simply upon the testimony that is produced, which indicates the necessity of making the change.

Mr. MANN. The Interstate Commerce Commission in its last report also uses this language in another place, stating what authority they want:

The Commission may find after careful and often extended investigation that a rate complained against is unreasonable and order the carrier to desist from charging that rate for the future, etc.

You think that language means not *a* rate or *the* rate, but *rates* generally?

Mr. BACON. I think it is necessarily implied, Mr. Mann, that if a rate is susceptible of correction that any rate is, or any number of rates are that may be properly embraced in the case.

Mr. MANN. They also say in their last report that they ought to have authority to direct a railroad company to cease and desist from charging *the* rate complained of, and to substitute therefor *a* rate. You think that also refers—

Mr. BACON. Has the same meaning exactly.

Mr. MANN. It seems to be very unfortunate that these officers of the Government have not studied the use of the English language.

Mr. BACON. It is the common use of the term between shippers and railroad men and members of the Commission and everybody that has anything to do with it.

Mr. ESCH. As a matter of practice in the decisions of the interstate commerce court heretofore—

Mr. BACON. You mean the Interstate Commerce Commission?

Mr. ESCH. Yes. When the rate was complained of before have they gone into a decision of schedules or have they confined themselves practically to the rate complained of?

Mr. BACON. They have confined themselves to the complaint.

Mr. LAMAR. What would be the difference between filing one petition complaining of 50 rates and filing 50 petitions complaining of 50 rates? Why not challenge them in one petition?

Mr. BACON. There would be no difference, but it would be a great deal more sensible—

Mr. LAMAR. I ask this in view of the objection raised by Mr. Mann. Would not the power of the Commission be as comprehensive in one case as in the other? What would be the difference between filing one petition containing 50 complaints and filing 50 petitions containing 50 complaints?

Mr. BACON. There would be no difference, but I have no idea of having rates treated in that way.

Mr. SHACKLEFORD. Under the power of the Commission, would the Commission have a right, if this bill became a law, to raise a given rate in order to equalize the rates between cities or communities and railroads?

Mr. BACON. I could not pass upon that question, but I doubt very much whether they would ever feel justified—

Mr. SHACKLEFORD. Not would they feel justified in doing it, but would they have authority to do it? Under the authority proposed, would the Commission have the right to raise rates on one line in order to equalize it with other lines?

Mr. BACON. I can only say in relation to that that the practice—

Mr. SHACKLEFORD. I don't care for the practice; I only want to know what power they would have under this law. Would the power be there to do that?

Mr. BACON. It might be inferred. When two rates have been complained of as unjust—

Mr. SHACKLEFORD. We are trying to get some light on this in order to know how to vote on the bill. I would like to know whether this power conferred on the Commission that is sought here would give the Commission a right under certain circumstances to raise rates.

Mr. BACON. I would say in reply to that that the only parties authorized to bring complaints—

Mr. SHACKLEFORD. I am not talking about who are authorized to bring complaints, but what authority—

Mr. BACON. Please hear me through.

Mr. SHACKLEFORD. What power the Commission would have.

Mr. BACON. The only parties authorized to bring complaints are individuals, corporations and associations, and other organizations of that kind, and those complaints will always be for the reduction of rates. There is no authority given in the act for the railway company to come in and complain that a rate is not high enough and ask the Commission to raise it.

Mr. SHACKLEFORD. Suppose it should be complained that the rate on lumber from Eau Claire to some given point was too low as compared with the rate from La Crosse. Under that would the Commission have the right, under the power sought to be given it, to raise the rate from one point to equalize it with the other?

Mr. BACON. I would say that in the Eau Claire case the Commission ordered the adjustment of those rates by the lowering of the higher rate.

Mr. SHACKLEFORD. In that case the higher rate was lowered?

Mr. BACON. Yes, sir.

Mr. SHACKLEFORD. But in the case that one rate was complained of as being too low, how would the Commission remedy a condition of that sort?

Mr. BACON. That is provided under this bill that is proposed. They can not under the present law.

Mr. SHACKLEFORD. How would they do it?

Mr. BACON. We can only judge how they would do it by what they have done. They have always done it by reducing the higher rate. This bill provides that the Commission shall declare what the rates shall be from each point in question, not declaring the difference—or, rather, it does provide that after it declares the difference if it becomes necessary to fix it absolutely from each of the points in question it is authorized to do that.

Mr. SHACKLEFORD. Then would a railroad that lowered that rate infract the law?

Mr. BACON. It certainly would.

Mr. SHACKLEFORD. It confers power, then, on the Commission to raise rates above what the railroads put them at?

Mr. BACON. Not by any means. I would like you to repeat that last remark.

Mr. SHACKLEFORD. The question I asked was whether this power conferred upon the Interstate Commerce Commission would give it the right to raise rates in a case, or to forbid the railroads from lowering its rates—in the Eau Claire and La Crosse case, for instance.

Mr. BACON. After it has fixed the proper relation of rates from two points—

Mr. SHACKLEFORD. I mean in order to preserve what they determine to be a fair adjustment, would they say to one railroad, "You bring your rate down to this point," and to the other railroad, "You bring your rate up to this point"—would they have authority to do that under this bill?

Mr. BACON. They would have authority under this bill to fix the two rates and to require those two rates to be observed. And if after fixing those rates one of the railroads should go below it it would have to come before the Commission again.

Mr. SHACKLEFORD. Then if the Eau Claire rate was as low as it ought to be and the La Crosse rate was still lower, what would the Commission do to adjust that?

Mr. BACON. It would require the observance of the rate it had previously fixed.

Mr. SHACKLEFORD. If the rate was lower than that rate they would compel it to come up to it then?

Mr. BACON. I don't think so. They never have done that.

Mr. SHACKLEFORD. How would they get out of that situation, then?

Mr. BACON. I have reference to that Eau Claire case; I have studied that.

Mr. SHACKLEFORD. I would like to get at that—where a rate is fixed and the railroad fixes a still lower rate, how would you preserve that adjustment?

Mr. BACON. By observing the rate the Commission has fixed.

Mr. SHACKLEFORD. Supposing the rate is below that, how would you adjust it?

Mr. BACON. If they are required to observe the rate which the Commission fixes it can not be made lower.

Mr. SHACKLEFORD. Suppose they do make it lower?

Mr. BACON. Then they would be disobeying the law.

Mr. RICHARDSON. You are talking about the difference in "rate" and "rates." Is it not a fact that you have some precedent established by the Interstate Commerce Commission prior to the maximum-rate decision in 1897 that throws some light on this?

Mr. BACON. Yes, sir.

Mr. RICHARDSON. Did not Judge Cooley and other members of the Interstate Commerce Commission, before that maximum-rate case was decided, hold or give orders directing what rates should be maintained?

Mr. BACON. There were some cases in which they did that; yes, sir.

Mr. RICHARDSON. And did they have any regard to what the technical difference is between "rate" and "rates?"

Mr. BACON. I never heard the question raised in any discussion on the subject.

Mr. RICHARDSON. By Mr. Cooley or Mr. Schoonmaker or any of those men?

Mr. BACON. Never.

Mr. RICHARDSON. Where a rate had been inquired into and they had held it to be unreasonable and unjust and unfair, they directed what the rate should be, and no question was ever raised as to the technical difference between "rate" and "rates?"

Mr. BACON. I never heard it raised before anywhere.

Mr. RICHARDSON. And those directions made by Cooley and Schoonmaker and others had reference to the relation or dependence of rates upon each other?

Mr. BACON. Yes, sir.

Mr. RICHARDSON. It was not as to a single rate, but as to whether it related to all the rates that involved that particular one on that railroad?

Mr. BACON. In one of the other cases when Judge Cooley was Commissioner, relating to rates from points in Minnesota, variously 40, or 50 miles from the Mississippi River, the Commission made an order that the rates on that whole line of road to Milwaukee and Chicago should not be more than $2\frac{1}{2}$ cents higher than rates from points on the river which it paralleled, and it involved a reduction of 5 or 6 cents a hundred in some cases, and it included 50 or more rates.

Mr. RICHARDSON. And the opinion that you have given in answer to Mr. Mann's technical questions as to the difference between "rate" and "rates" is based upon the knowledge that you acquired from those orders made at that time?

Mr. BACON. Those are included in my mind; yes, sir.

Mr. STEVENS. I would like to return to the question brought up by Mr. Shackleford for a moment. You recall the statement made by Judge Prouty, as I remember it, that there existed a certain condition in the oil traffic between Cleveland, Ohio, and New Orleans and Chicago, Ill., and New Orleans. In Cleveland there are quite a number of independent refiners. In Chicago the refinery is owned by the Standard Oil Company. The rate from Cleveland to New Orleans, as I recall it, was, say, 26 cents a hundred, which was a fair and rea-

sonable rate. The rate from Chicago to New Orleans was 24 cents, which was an unduly low rate. The freight on other articles of about the same class was at the same rate between Chicago and New Orleans and Cleveland and New Orleans. As I recall what Mr. Prouty said, he instanced that as one of the cases where the schedule discriminated in favor of the location of the Standard Oil Company and against the location of the independent oil refiners. He stated, as I remember, that that rate of the independents between Cleveland and New Orleans was a fair, reasonable, and just rate, and that the other was too low a rate. What would you think ought to be done or could be done under this bill in that sort of a case?

Mr. BACON. That is a pretty difficult question to decide.

Mr. STEVENS. I am giving you the statement that Judge Prouty makes. Now, I would like to have your opinion of what could be done in that hard case under this bill.

Mr. BACON. I think what would be done would be the reduction of the higher rate.

Mr. STEVENS. But he stated that that rate of 26 cents between Cleveland and New Orleans was a just, fair, and reasonable rate. Now, is there any authority under this bill to reduce a fair, just, and reasonable rate?

Mr. BACON. There is authority to adjust relative rates, making them relatively just.

Mr. STEVENS. I am asking you how it could be done. Here is a rate that is a fair, just, reasonable rate, a rate of 26 cents. Now, that rate is guaranteed to that carrier under the Constitution, is it not? He is entitled to a just, fair, and reasonable rate under this bill or any other, is he not?

Mr. BACON. The Commission is absolutely clear about that point.

Mr. STEVENS. I am stating what Judge Prouty said—that that was a fair, just, and reasonable rate. Assuming that, the carrier is entitled to it, is he not?

Mr. BACON. Unless injustice is done by it to some other locality.

Mr. STEVENS. Is not the carrier entitled to a just, fair, and reasonable rate as a fair compensation for the work that it does?

Mr. BACON. It is as a whole; but one rate taken out of a dozen rates, the change of one rate by 1 cent or 2 cents per hundred pounds would be likely to divest the carrier of a reasonable profit.

Mr. STEVENS. Now I am asking you here about two rates. One is stated by the Commission to be, in its opinion, just, fair, and reasonable, and the carrier is entitled to it. The other is unduly low and unreasonable, whereby the preference is given to a particular community and a particular part of the country. Now, how would that be decided under the bill under consideration?

Mr. BACON. I think that it would be, unquestionably, decided by the reduction of the higher rate.

Mr. STEVENS. Even though the higher rate was fair, just, and reasonable, and such action would take away the compensation of the carrier without just compensation?

Mr. BACON. No. It is not supposable that the change of one rate out of a dozen will divest the carrier of its proper return on its investment; and if injustice is effected by the continuance of that rate, it is certainly within the power of the Commission to reduce that rate.

Mr. STEVENS. The tariff on oil was 26 cents, which was just, fair, and reasonable, in the opinion of the Commission. You would adjust that, and take off 2 cents, for instance, and put that on other commodities which are also paying a fair, just, and reasonable rate?

Mr. BACON. I can hardly conceive of a case where it would be necessary to do that.

Mr. STEVENS. If a carrier is receiving fair, just, and reasonable rates, and you reduce one rate, that reduction has got to be made up by an addition being made to some other rate, has it not, in order to insure to the carrier a just, fair, and reasonable compensation?

Mr. BACON. Unless there is sufficient margin in its profits to admit of that reduction.

Mr. STEVENS. But suppose that a rate is fair, just, and reasonable, and you should reduce it, you would place the amount of the reduction somewhere else, would you not, in order to insure that carrier just, fair, and reasonable rates?

Mr. BACON. I do not think it would be necessary.

Mr. STEVENS. In other words, you are not willing to admit that there is any power given under this section 1 of the Cooper bill to raise rates, even though a rate is unjust, unduly low, and discriminatory, because it is too low?

Mr. BACON. Whether the power exists I can not say, but as I have said before, I am not clear. But I am clear in the opinion that it would never be exercised.

Mr. STEVENS. Even in a case like this I have cited?

Mr. BACON. No, sir.

Mr. ADAMSON. Do you think that a rate is ever found too low?

Mr. BACON. It never has been ascertained yet how low freight can be carried and still give a fair profit to the carrier. That is one of the unknown things.

Mr. CUSHMAN. Referring to the matter that Mr. Stevens has spoken of, the rate of 26 cents being a just and reasonable rate, and assuming the rate of 24 cents to be too low, it is your opinion, as I understand, that the Commission in a case of that kind would lower the higher rate of 26 cents to 24 cents. Did I correctly understand you?

Mr. BACON. I think that would be the probable result.

Mr. CUSHMAN. If that were done, and the railroad companies then lowered that 24 cent rate from Chicago to 22 cents, leaving the difference existing as it did before, what would then be done in that case?

Mr. BACON. That could not be done, because the Commission would issue an order fixing the two rates, and requiring that each of the parties involved should adhere to those rates under this bill.

Mr. SHACKLEFORD. In the case supposed by Mr. Stevens, the Cleveland rate being a reasonable and fair rate, and the Commission reducing it below what was reasonable and fair, and an appeal being taken to the courts, what would the courts do with that decision of the Commission, it being conceded that they had reduced the rate below what was reasonable and fair, what would be done in that case?

Mr. BACON. If the courts found that that was an unfair rate—

Mr. SHACKLEFORD. It being conceded, you know, that the rate was reasonable and fair.

Mr. BACON. If the court should find that the result of that reduc-

tion was to prevent the corporation from having a proper return on its capital invested it would undoubtedly nullify it.

Mr. STEVENS. Just one more question. If a corporation was making a just, fair, and reasonable rate in competition with a corporation that was making an undue and discriminatory rate, you would punish the company that was obeying the law instead of the corporation that was violating the law?

Mr. BACON. I do not conceive that such a result is likely to occur. I hold that railway companies, doing a public service, are in duty bound to see that no injustice is done in the operation of their rates with reference to any particular point or any particular commodity. Now, I have argued in the matter of the flour and wheat differential that even if the railroad company can not carry flour as cheaply as it can wheat, if it interferes unjustly with a manufacturing industry, an important manufacturing industry of this country, the company should submit to the equalization of the rates on the ground of its being possessed of valuable franchises which it has received from the public and on the ground that it is performing a public service, and that that service must be done not only without injustice between individuals and localities, but without injustice to commercial and manufacturing interests of the country.

The CHAIRMAN. Even though it imposes an injustice on the carrier?

Mr. BACON. Though it imposes a hardship in a single instance. You must take the average result, the average return, and action should not be based on one or two exceptional cases.

Thereupon the committee adjourned until to-morrow, Wednesday, January 11, 1905, at 10.30 o'clock a. m.

WEDNESDAY, *January 11, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. FRANCIS B. THURBER, PRESIDENT OF THE UNITED STATES EXPORT ASSOCIATION.

Mr. THURBER. I would state, Mr. Chairman and gentlemen, that I represent directly merchants and manufacturers who are members of the United States Export Association, some 220 in number, and situated in 34 States, that differ with Mr. Bacon and other supporters of the Cooper bill (H. R. 6273), and in order that I may not waste your time I have boiled down on paper a statement which I will read to you, because it may suggest some questions that members of the committee would like to ask me.

I represent directly merchants and manufacturers who are members of the United States Export Association, and indirectly the great majority of shippers in the United States, who, while opposed to unjust discriminations by railroads, are not prepared to adopt the remedy proposed by the advocates of this bill.

Mr. BACON. May I interrupt you to ask a question—because it will, perhaps, save time. I would like to know by what authority Mr.

Thurber assumes to represent the shippers of the United States generally.

Mr. THURBER. I say indirectly.

Mr. BACON. In what manner indirectly?

Mr. THURBER. Based upon my knowledge of the situation.

Mr. BACON. And it is your individual assumption?

Mr. THURBER. Yes; it is an assumption on my part, so far as I say that I represent the shippers. I represent them indirectly.

Mr. MANN. You do not pretend to be their authorized representative?

Mr. THURBER. No, sir.

Mr. MANN. The authorized representative of any commercial agencies or bodies or anything of that sort, do you?

Mr. THURBER. Excepting—

Mr. MANN. Except the United States Export Association?

Mr. THURBER. That is all, sir; and them I represent by resolution, which appears in this paper, and also I quote from the expressions of other commercial bodies that sustain my view.

I doubt if 10 per cent of its friends have given any serious thought as to whether there is any better way to remedy the evils which exist. They have simply followed the lead of Mr. Bacon, an earnest, honest man, who has embarked on a "Peter, the Hermit" crusade, and they have adopted his cure-all for a very complicated disease.

For thirty years I have been a student of the transportation question from a shipper's point of view, and an advocate of reasonable control of railways. I think I may say without egotism that I had more to do with creating a railroad commission, and defining its powers in New York State, than any other man; and with the exception of Hon. John H. Reagan, its father, I had as much to do with creating and defining the powers of the Interstate Commerce Commission.

The CHAIRMAN. Let me interrupt you there a moment. Do you give John H. Reagan the credit of the system that we have now?

Mr. THURBER. Mr. Reagan was the father of the interstate commerce bill.

The CHAIRMAN. This bill that is now a law?

Mr. THURBER. Yes, sir.

The CHAIRMAN. You are entirely mistaken. He was the undeviating opponent of this bill. He had his own bill, an entirely different proposition, instituting an entirely different method of control, and as distinct from this as it is possible to imagine.

Mr. THURBER. Mr. Chairman, I should not expect—

The CHAIRMAN. I was then a member of the House and a member of this committee at the time of the passage of that bill. You will remember—and, if not, let me remind you—that the House committee refused to report Mr. Reagan's bill. It adopted the bill that was then known as the Cullom bill. The House reversed that action and attached the Reagan bill to the Senate bill as an amendment, and in the conference, after Mr. Reagan had become United States Senator, the conference committee, of which he was a member, consented to the report of the House, receding from its amendment, and adopted the Senate bill.

Mr. THURBER. I know that there were several bills pending and that Mr. Reagan was, you might say, the advocate of regulation—

The CHAIRMAN. Of control, yes.

Mr. THURBER. But I cooperated with him very earnestly, I remem-

ber, in prohibiting pooling in that bill, and that afterwards we both concluded that under proper restrictions pooling was desirable, because it was necessary to prevent unjust discriminations.

Both of these laws were founded on a Massachusetts railway commission law, which confers full powers of investigation upon the Commission, with power to appeal to the courts, or to the legislature, to enjoin abuses and fix rates; and in both Massachusetts and New York this has been found sufficient to protect the public interests; better, indeed, than in those States which conferred rate-making powers upon their railroad commissioners. This is illustrated by the following article from the Railroad Gazette of December 30:

ARE RATE MAKING COMMISSIONS SUCCESSFUL?

It is an interesting phenomenon, in connection with the agitation for the enlargement of the powers of the Interstate Commerce Commission, that so much effort is expended in the exploitation of the evils alleged to exist, that none is available to show the applicability of the proposed remedies. Without for a moment admitting that the frictional evils incident to the mutual adjustments necessary between a rapidly developing transportation system and an industrial organization, of which the former is a part, which is moving forward with equal speed, are as great as the proponents of the Quarles-Cooper bill contend, it is worth while to ask whether, if they were, the remedy proposed would correct them. Thirty States of the American Union now have railroad commissions, and in 22 instances these commissions have rate making powers.

Would it not be reasonable to investigate the results in these States before adopting similar legislation concerning Interstate Commerce? Such data as are now available indicate that official rate making has not been very satisfactory to those states which have tried it. Georgia, for example, was one of the earliest States to adopt a drastic railroad commission law, and has consistently followed the plan of interposing its authority between the buyers and sellers of railroad transportation. Yet the newspapers of Georgia to-day declare that the shippers of their State pay more than their neighbors in adjoining States, and that interstate traffic, which the Interstate Commerce Commission so loudly complains is not subject to effective regulation, is carried similar distances at much lower rates. A recent editorial in the Atlanta Journal contains the following:

"A merchant in Marietta can ship certain goods to Chattanooga for 15 cents per hundred; to Knoxville for 19 cents per hundred. To ship the same goods to Atlanta he must pay 30 cents per hundred; to Macon 70 cents per hundred. Atlanta is 20 miles from Marietta; Chattanooga is 128 miles, and yet the Chattanooga merchant pays just one-half of the freight the Atlanta merchant does."

MR. ADAMSON. That argument relates to interstate commerce and not to the Georgia railroad situation.

MR. THURBER. Well, sir; it speaks of the Georgia railroad situation, and it has a bearing on the interstate rates.

MR. ADAMSON. There is no trouble about the Georgia railroad commission, you can rest easy on that; the only question is, Has the Federal Government the same right to make such a law as the State has, the State chartering those corporations and the Federal Government not chartering them? The Federal Government derives its power solely from the interstate commerce clause of the Constitution.

MR. THURBER. Yes, sir.

MR. ADAMSON. And not from the fact that it is the father of these corporations.

MR. THURBER. Yes, sir; that is true. I think this article is pertinent to the situation and tends to touch the various sides of this question.

MR. ADAMSON. You can find newspaper articles pertinent to the general subject that you could read until doomsday.

Mr. THURBER (continuing to read):

"Why? Because Chattanooga is out of the State, and Atlanta is in it. This is merely one of a hundred instances where Georgia points are placed at a positive disadvantage in freight rates because they are located in the State."

The editorial from which the foregoing is an extract shows traces of feeling which suggest the attitude of an advocate rather than one of judicial impartiality—

And then it goes on to discuss it, and it shows that the reason for it is that it is the arm's length situation; that the railroad agent simply refers a shipper to the State commission, and says: "Those are the rates fixed by the State commission, and we have nothing to do with it." It removes the incentive he has to endeavor to meet situations that arise in business.

Mr. ADAMSON. It is plain to any man, and I think to the Atlanta Journal, that rates between Atlanta and Knoxville are not Georgia railroad commission matters at all; they are interstate commerce matters.

Mr. THURBER. The Railroad Gazette goes on to say:

The shipper is told, in effect, that the State will look out for the needs of business in the way of reduced rates of transportation, and he knows that, until driven to plead confiscatory taking of property without due process of law at the bar of justice, the revenues of his corporation will have no defender but himself and his fellow officers. He knows that a justifiable reduction will be made in argument for others that are wholly devoid of justification, and he naturally assumes an attitude of hostility to all reductions. Again, capital is reluctant to engage in railroad enterprises where the rate-making power has been taken from its employees and lodged in political officers, and the States which have the most drastic regulative laws have usually seen the slowest development of railroad facilities, with the natural accompaniment of slow development, the retardation of the natural decline in rates.

From my own knowledge, I can testify that it was not intended to confer rate-making powers upon the Interstate Commerce Commission. This is proven by the following extracts from the debates in Congress when the bill was pending—and I have a quotation here from what Mr. Findlay said on December 8, 1884, and also what Mr. Reagan said, in answer to Mr. Findlay.

Later, on January 7, 1905, Mr. Reagan said:

One of the greatest troubles I have had, even with the friends of legislation in this direction, has been to get them to understand that this is not a bill to regulate freight rates; that it does not undertake to prescribe rates for the transportation of freight. I know the difficulties which would attend any measure attempting to prescribe rates of freight. I am persuaded that no law fixing rates of freight could be made to work with justice either to the railroads or to the public; and I have intended from the beginning to avoid that difficulty.

And in the Senate, May 6, 1886, Mr. Kenna said:

What constitutes a reasonable rate is precisely the thing which the people of this country are unwilling to leave to the arbitrary discretion of the railroad commission.

Judge Cooley, its first chairman, recognized this; but after his retirement the Commission assumed that it had this power, and exercised it until the Supreme Court of the United States decided it had not, since which time the radical element in the Commission has been seeking to get this power, and has invoked the influence of the radical element among shippers to induce Congress to confer it. The state of mind of this element is illustrated by the fact that at the interstate-commerce law meeting held at St. Louis, October 27, 1904, it was stated that the railroads owned the Congress of the United States, and no longer ago than December 30, 1904, Mr. Prouty of the Inter-

state Commerce Commission, in an interview published in Chicago, is reported to have said that "If the Commission was worth buying, the railroads would own it."

Mr. BACON. May I ask to whom that is attributed—Congress being owned by the railroads of the United States?

Mr. THURBER. Well, Mr. Bacon made a statement there which I had not intended to say he was entirely responsible for, because it was made by others. The attorney for the Texas cattle shippers—what was his name?

Mr. BACON. Mr. Cowan.

Mr. THURBER. Mr. Cowan also made that same statement. I was present and heard it, and the whole trend of the papers and speeches which were made there was so radical that it did not commend itself to my judgment, although I am in favor of the regulation of the railroads.

Mr. BACON. I asked who made the statement that Congress was owned by the railroads.

Mr. THURBER. I think you did, Mr. Bacon, and I think that Mr. Cowan did.

Mr. BACON. I never made such a statement and never had such a thought in my life.

Mr. THURBER. That was the impression I got.

Mr. BACON. And I wish to say the trend of thought in that convention was decidedly conservative and reasonable. The statements that were made were reasonable, and a resolution was adopted that the statements of one man were not indorsed and would not be allowed to go out as the expression of the convention.

Mr. MANN. When I asked you yesterday, quoting from "Freight," whether you made such a statement, you said that you did not remember, as I recall it.

Mr. BACON. I said that on two or three occasions.

Mr. MANN. And now you say you did not make such a statement?

Mr. BACON. I say I have no recollection of such a statement as the one attributed to me. I will say now that if you can prove I made such a statement I will stand by it.

Mr. MANN. I never wanted to prove it; I wanted you to deny it, for your own good name and the good name of the members of Congress, and you refused to deny it when I gave you the opportunity.

Mr. BACON. I stated that I had no recollection of making such a statement.

Mr. MANN. I think you will find the record says that you say you do not remember whether you made the statement or not. You did say afterwards that you never had such a thought.

Mr. BACON. I think there has been enough said about that.

Mr. ADAMSON. You were given the opportunity to deny it for the good sense of yourself and the integrity of yourself and your associates.

Mr. THURBER. I can only say that I went into that convention with a paper which advocated reasonable control of railroads, and after three papers had preceded me which, in my judgment, advocated unreasonable control of railroads, I was cut off by the passage of a resolution limiting debate to two minutes.

Mr. BACON. Let me say, Mr. Chairman, that Mr. Thurber offered his resolution after the committee on resolutions had made its report

and there was no time to consider it. When the meeting of the committee on resolutions was held a motion was passed that no further resolutions would be entertained other than those that had been presented to the committee.

Mr. THURBER. I endeavored to speak to the report of the committee on resolutions but was cut off by the two-minute rule.

Mr. MANN. That is, there were only two minutes allowed to discuss the report of the committee on resolutions?

Mr. THURBER. No person was allowed more than two minutes.

Mr. MANN. I think that I read some report of a speech that certainly took more than two minutes to deliver, discussing the report of the committee on resolutions.

Mr. THURBER. That was before the passage of the rule.

Mr. ADAMSON. Perhaps they were allowed leave to print.

Mr. BACON. I will say that nearly an hour was devoted to the discussion of the report of the committee on resolutions. This was on the second day, past noon on the second day, when there were only two or three hours remaining for action and a large number of delegates were desirous to return home by afternoon or evening trains, and consequently a limit was set to debate; after there had been some considerable debate a limit was set to further discussion on the question, and finally the report was adopted, on the previous question being adopted.

Mr. THURBER. Mr. Prouty, of the Interstate Commerce Commission, in an interview published in Chicago, is reported to have said that "If the Commission was worth buying, the railroads would own it." The reasonable element among shippers does not believe this, but they are less demonstrative than the radical element and do not make themselves heard. Their view is well expressed by resolutions adopted by the New York Board of Trade and Transportation.

Mr. ADAMSON. Are you still reading from a newspaper or is that your own production?

Mr. THURBER. No, sir; I am not reading from the newspaper now. The resolutions referred to are as follows:

Resolved, That to invest the Interstate Commerce Commission with power to declare "what rate or rates" are "unjustly discriminative or unreasonable," and "what rates would be just and reasonable," and to further provide that the rates which the Commission deem just and reasonable shall be substituted, is, in our judgment, a long step toward conferring the general rate-making power upon the Commission, if, indeed, the provisions of the Quarles-Cooper bill would not confer precisely that power. The advocates of that bill disavow any intent to confer such power and do not defend the conferring of such power. The Commission has heretofore claimed the rate-making power, and has endeavored to exercise it in various decisions, which has been overruled by the courts. It seems to have been made clear that neither the framers of the act nor Congress intended to confer that power on the Interstate Commerce Commission. The Quarles-Cooper bill confers that power to the extent of pronouncing rates and classifications to be unreasonable and how far they are unjust, or the naming of a rate or practice in substitution. This confers a judicial power upon a constantly changing body, appointed without special reference to that phase of their duties; and while the country has been fortunate thus far in the character of their men placed on the Commission, political and other considerations may have undue weight in the selection of Commissioners, and the Commission would be more likely to be influenced by such considerations than the judiciary. The Commission has full power of investigation and can appeal to the court to enforce its conclusions, and the courts have supported the findings of the Commission by injunction when the prohibition of unjust discriminations was concerned. This is the effective remedy that has been found to exist under the present law.

Mr. ADAMSON. Will you let me ask you a question right there?

Mr. THURBER. Certainly.

Mr. ADAMSON. Do you believe that it is more dangerous to invest the Commission with the rate-making power, so far as the question of possible partisanship is concerned, than to invest that power in railroad men?

Mr. THURBER. I do not know that, sir; but I do think they would be more likely to err than the courts. Our Atlantic-port people are afraid that the Gulf-port people will get the advantage of them, and the Gulf-port people are afraid that the Pacific-coast people will get the advantage. So this question of rates is a very intricate question for the Interstate Commerce Commission to consider.

Mr. ADAMSON. Would not partisanship be the most dangerous factor to be reckoned with in investing the Commission with that power?

Mr. THURBER. I think sectionalism or partisanship would be most dangerous. This country is a country where the great object is to get the products of the country to a market abroad, and I don't think that the power in any narrow way should be lodged anywhere where it might interfere with the Constitution of the United States, which is a safeguard in these great matters.

Mr. TOWNSEND. Would not the Supreme Court look after that, if it interfered with the Constitution?

Mr. THURBER. Yes. That is where our safety lies—in our courts. And if we have not enough courts now to give speedy decisions, then we should have more courts established for that purpose.

I am now reading from the resolutions of the New York Board of Trade and Transportation, adopted by them, and which have been placed on the programme for consideration at the meeting of the National Board of Trade in Washington the coming week [reading]:

We believe, therefore, that the decisions of the Interstate Commerce Commission should be, and can be, enforced when made upon complaint of unjust discrimination; but we are not prepared to commend a measure which gives the Interstate Commerce Commission a power so general. It seems to us wiser, for the present at least, to rely upon the recently applied method of enforcing the decisions of the Commission by injunction than to enact the Quarles-Cooper bill, the provisions of which may be construed to be much more far-reaching than even its advocates are willing to defend or consent to.

Resolved, That this Board earnestly advocates legislation by Congress to amend the interstate-commerce law so as to permit pooling by railroads, under the supervision and control of the Interstate Commerce Commission, to the end that unjust discrimination may be prevented and reasonable, uniform, and stable rates be established.

This view is further emphasized by the following resolutions, adopted by the directors of the United States Export Association January 3, 1905:

Resolved, That in the opinion of this association the bill now pending in Congress known as the Cooper-Quarles bill, conferring in some degree rate-making powers upon the Interstate Commerce Commission and making its findings operative until reversed by the courts, is a step in the wrong direction; that while the Interstate Commerce Commission performs a useful function in investigating and making recommendations, it should not have powers equivalent to prosecutor, judge, and jury combined; that to make its findings operative until reversed by the courts is like hanging a man and trying him afterwards, for rates are so related that one affects a thousand or a million, and a damage thus done can not be estimated or repaired.

Resolved, That this association is opposed to unjust discrimination in any form in the operation of our public highways, but a reasonable elasticity in their operation is necessary in order to market our surplus products abroad, and that to deny this

would operate to the detriment of our producers, manufacturers, laborers, and the general public.

Resolved, That the courts are the best judges of what constitutes a "square deal," and if there are not now enough to give prompt decisions, more should be established to that end.

Mr. Chairman and gentlemen of your committee, there are a few great facts that are not generally recognized. Among them are, first, that all combinations and consolidations of transportation lines in this country have resulted in better service and lower rates. This is illustrated by the following figures from the United States Bureau of Statistics. I have the figures here giving the average receipts per ton-mile of leading railroads in 1870, 1880, 1890, and 1902, inclusive. This shows a progressive decline, which it is not necessary for me to give in detail, but the decline in average receipts on these leading railroads in the time given is from 1.99 in 1870 to 0.75 in 1902; that is, per ton-mile.

This result has been attained largely through combinations and consolidations, which, contrary to the impression generally entertained, have not resulted in abolishing competition, but rather in economies of operation and improvement in service, accompanied by a steady reduction of rates, with but few exceptions, which prove the rule. During the past three years rates have slightly advanced, owing to a much greater advance in labor and materials. Railway freight rates in the United States are, however, less than one-half those of other principal countries. Our railroads carry our chief products 1,000 miles to our seaboard for less than the railroads of other countries charge for carrying these products 200 miles inland from the seacoast after they have crossed the ocean. And the railroad rates abroad and in the United States have been graphically illustrated by the Philadelphia museums in a diagram which I have had reproduced, which is attached to this paper.

Mr. RICHARDSON. What is the difference between local rates in this country and in England?

Mr. THURBER. They are about double in England what they are here, sir—our local rates.

Mr. BACON. Do you not know that the rates in England include delivery at both ends—teaming?

Mr. THURBER. They do in some instances.

Mr. RICHARDSON. What is the difference between the profits of the local rates in this country and the through rates—the long haul and the short haul?

Mr. THURBER. As to the profits?

Mr. RICHARDSON. Yes; what is the proportion; what is the difference?

Mr. THURBER. That I don't know; but my impression is—

Mr. RICHARDSON. Is it not five times as great in local rates as in the through rates?

Mr. THURBER. I do not think it is five times as great, but I think it is greater.

Mr. RICHARDSON. Do you not know that it is five times greater?

Mr. THURBER. No; that does not come under my observation.

Mr. LAMAR. Do you know whether the capitalization of railroads is under Government supervision and control in England?

Mr. THURBER. No, sir; I do not know; but they are capitalized much higher in England; the cost of construction in England is much

greater than in the United States, and the land costs them more than here; the damages are much greater in England. The capitalization in England, I think, is more than double what it is in the United States.

Mr. LAMAR. What is the relation of capitalization to cost in England, if you know? I ask for information; I do not know myself.

Mr. THURBER. I think the board of trade, a department of the Government there, has a very general supervision over capitalization, as well as everything else. No railroad can be constructed in England unless it has the approval of the board of trade, and second, get the authority of Parliament.

Mr. RICHARDSON. What is the difference between the classification of this country and England?

Mr. THURBER. The classification of freight? I don't know.

Mr. RICHARDSON. You don't know that?

Mr. THURBER. No, sir.

Mr. RICHARDSON. You do not know how it comes in as to classification in this country and in England?

Mr. THURBER. No, sir; I do not.

Mr. SHACKLEFORD. In England they have a statutory maximum rate, do they not?

Mr. THURBER. No, sir; I think not, unless it is in the charters of the various railroads. I think that that was in the earlier charters, from what I have read and studied, that the earlier charters of the railroads all imposed maximum rates.

Mr. SHACKLEFORD. I think I noticed in Mr. Prouty's testimony before this or some other committee that he stated that Parliament had established maximum rates.

Mr. THURBER. So far as my knowledge extends, the maximum rates were, in the beginning, in the charters of the roads, and they have always been so much higher than those rates obtaining in actual business that had no bearing

To continue along the line I was on—

That this great result has been attained by free and unhampered American railroad men, who have induced investors to put ten thousand million dollars into making this possible. It has merged the fertile furrow of the prairie farm in the closing furrow of the sea, and made myriad acres valuable which otherwise would be valueless. It has made us the leading nation of the world. Are the men who have done this less entitled to reward than those who invested in the land and waited for the unearned increment? It isn't what you have got, but where you have got it, that constitutes value, and this applies alike to fields, forests, mines, and factories.

Every private car line which gives its owners an advantage over the average shipper should be absorbed by the railroads, just as the privately owned fast freight lines were absorbed.

Every terminal railroad which gives its owners a like advantage should be thus absorbed.

If all the railroads in the United States were consolidated into one great system under corporate management, it would be to the public advantage, just as previous consolidations have been. It would not abrogate competition, for the great competition is that of sections, States, and nations. If a manufacturer in one State wants to bid on a contract in another State, where a low commodity rate would get the business and keep his works running, and a railroad has empty cars

going that way, it should be allowed to make a special rate, provided that rate is open to all manufacturers on equal terms. If an exporter can sell a cargo of wheat in Europe in competition with Argentina, if he can get a special rate at a minute's notice, and the railroad can make the deal possible, it should be allowed to do so.

The rate there is a very important consideration. In the great movements in trade to-day the bargains are made largely by telegraph. It requires instant decision. An importer abroad will cable to his correspondent here an offer. Whether that offer can be accepted depends upon the rate of freight. The correspondent in this country will go to the proper railroad man and if that can be decided right off, without any regulations and laws to interfere, it is greatly to the interest of this country. For the last five years my study of this question has been very largely in creating foreign markets abroad, widening the markets for American products. I have seen the absolute necessity for an absolute reciprocity in that business, and I believe that there should be, in whatever legislation may be enacted in regard to the control of rates, some provision which would, so far as our export trade is concerned, give a greater reciprocity so far as our domestic trade is concerned. It is an absolute requisite. All questions of shipping, and the ocean rates, come in. But it is all summed up in the total which enables the trade to be made, and it all has to be made, by telegraph.

Mr. ADAMSON. Do you recommend any legislation at all, or do you hold that it is unnecessary to have any?

Mr. THURBER. I think, so far as the present situation is concerned, that if you will create another court which will enable speedy decisions to be made in all controversies that arise between shippers and carriers, and you will give the railroads the right to make reasonable agreements between themselves, subject to the approval of the Interstate Commerce Commission—

Mr. ADAMSON. You want a pooling clause?

Mr. THURBER. Yes, sir; because that is absolutely necessary to prevent these unjust discriminations. I formerly was in favor of the prohibition of pooling. I did all I could with the commerce of this country to prohibit pooling, because we felt that it was likely to result, if the railroads had that power, in exorbitant rates for transportation; but the experience of twelve years has shown me that there was no danger of unjust rates, and there was great danger of unjust discriminations; and the prevention of pooling, the making of agreements between railroads allowed the unscrupulous element in railroad management to sand bag the honest element in railroad management into making these unjust discriminations, and Mr. Reagan wrote a letter, which was submitted here to Congress, in which he stated that subject to reasonable control by the Interstate Commerce Commission he thought such agreements should be allowed, and he wrote to me to the effect that he agreed with me in my conclusions that the law had operated differently from what he thought it would when it was enacted.

Mr. BACON. I would like to ask one question, whether Mr. Thurber is not aware that when pooling was in operation very extensively in this country it failed to prevent discrimination, from the fact that pooling arrangements were temporary and limited to a certain time, and every railroad was striving to secure the advantage, so that upon

the renewal of pooling arrangements it could acquire a larger percentage of the rate, and therefore the efforts of each railroad were bent to the end of increasing their percentage, so as to make a better arrangement upon the renewal of the pooling contract.

Mr. THURBER. I will say in answer to Mr. Bacon's question that Mr. Albert Fink, one of the ablest railroad men in this country, considered that it was impossible to stop unjust discriminations, or to minimize them, unless the railroads had the right to enforce their agreements upon each other—in other words, the same right that all other corporations or other individuals have.

Mr. BACON. That does not answer my question. What I want you to state is if you do not know that discriminations were actually made under pooling contracts, during their continuance?

Mr. THURBER. I think that it was greatly minimized. I do not think that it was stopped entirely.

The CHAIRMAN. There never has been a time when a pooling contract could be enforced in the courts. They were always contrary to the common law, and never have been enforced by the courts.

Mr. THURBER. I do not know as to being contrary to the common law, but I do know that when the trunk lines were upheld, and Mr. Fink was commissioner, it resulted in fair rates and greater stability than after that commission was pronounced illegal.

The CHAIRMAN. But the enforcement of those contracts was dependent entirely upon the integrity of the parties and not at all upon fear of the operation of the courts.

Mr. THURBER. That is my impression.

Mr. BACON. May I say a word?

The CHAIRMAN. After Mr. Thurber has answered.

Mr. THURBER. Certainly.

Mr. BACON. I want to say that while they were subject to the integrity of the parties they were very largely observed by them, but that whether or not, even though they were legally binding, the same inducement would remain for a poor road getting a larger part of the traffic than its percentage in order to get a higher percentage in the next contract, and I will say that I have had repeated offers of rebates from different roads on traffic that was comprised in the pools years ago.

Mr. THURBER. I see that your time is very short now, Mr. Chairman, and I will abbreviate my remarks. It is this freedom which has reduced our rates in this country to one-half those of other countries, and we should not put our railroads in official clamps which would prevent this.

There is a broad distinction, however, between rate-making and preventing unjust discriminations. We need the Interstate Commerce Commission to police the latter, but it should not be the judge of the former. I think that the rest of what I had to say has been practically covered here.

Mr. ADAMSON. Do you not think that the prevention of discrimination should be the limit of Federal interference?

Mr. THURBER. Yes, sir; I do.

Mr. RICHARDSON. How would you enforce the power to prevent the discrimination?

Mr. THURBER. I would have the Interstate Commerce Commission as a prosecuting body, and I would have the courts as judges of what was just and what was unjust, and what in accordance with the law:

Mr. LAMAR. Are you acquainted with the President's views on this matter?

Mr. THURBER. I can not say that I am.

Mr. LAMAR. You read his message to Congress?

Mr. THURBER. Yes, sir.

Mr. LAMAR. You understand from that that he recommends that the commission shall have the power, not exactly for original rate-making—rate-making in general—but that they may have the power to correct an unjust rate and put the corrected rate in effect at once, subject to the action of the courts?

Mr. THURBER. Yes, sir; I think he has imbibed Mr. Bacon's views.

Mr. LAMAR. Yes. You do not think, then, that he is safe and sound on that?

Mr. THURBER. I think that he is one of the most honest and well-meaning men in the world, but he is just as liable to be mistaken as anybody else, and just as liable to error, because of not knowing about the subject under consideration.

Mr. STEVENS. I think the committee would like to have you and your association identified, and I would like to know if you are the same person and if the United States Export Association is the same body, which received funds from Gen. Leonard Wood when he was governor-general of Cuba, and from Mr. Havemeyer, of the sugar trust, on this so-called reciprocity treaty?

Mr. THURBER. The bureau did receive money for the purpose of endeavoring to get a reciprocity treaty between Cuba and the United States.

Mr. STEVENS. What I wanted to know is whether you are the same person as the Mr. Thurber who was then connected with that?

Mr. THURBER. I am.

Mr. STEVENS. And whether this association is the same association as endeavored to get funds from General Wood and Mr. Havemeyer?

Mr. THURBER. It is; yes, sir.

Mr. BACON. I would like to ask one question, and that is, in view of the fact that you have appeared at several of the commercial conventions in opposition to this legislation—I wish to make this inquiry for the information of the committee—whether you have received, are receiving, or expect to receive compensation from any of the corporations for that service?

Mr. THURBER. No, sir; I do not.

Mr. BACON. That is all.

Mr. TOWNSEND. Is this gentleman going to be here after to-day?

The CHAIRMAN. Do you desire to ask him any questions?

Mr. TOWNSEND. Yes, I want to, very much.

The CHAIRMAN. Mr. Thurber, can you appear before the committee on Friday?

Mr. THURBER. I can if it is desired.

The CHAIRMAN. I wish you would.

Thereupon the committee adjourned until to-morrow, Thursday, at 10.30 o'clock a. m.

Mr. CHAIRMAN. I wish to correct my statement of Wednesday, to which you called my attention, in regard to the matter of stating that the Hon. John H. Reagan was "the father" of the present interstate-commerce bill. Mr. Reagan was perhaps the most prominent advocate of legislation for the regulation of railways at that time, in which I

supported him; but you are correct in stating that he was not the author of the present interstate-commerce law, and I think that both Mr. Reagan and myself at that time were very much in the position of Mr. Bacon at the present time, namely, that we felt something ought to be done, but we were not exactly sure as to how it should be done and to what extent it should be done.

I would ask that the words "its father" be omitted from the first page of my statement submitted to your committee on Wednesday (see copy herewith). I also wish to answer more fully one of the questions which was asked me on Wednesday.

Mr. Stevens, of your committee, just at the close of the hearing asked me whether I was the Thurber who was connected with the agitation for the Cuban reciprocity treaty, and as this may have a bearing on Mr. Stevens's (and possibly others) opinion of my view of the bill now under consideration, I wish to answer his question more fully than is possible by yes or no, viz: The Cuban chambers of commerce sent a committee here to try and get a reciprocity treaty which would admit their products into the United States and our products into Cuba.

They came to me as president of the United States Export Association for advice and help. I told them to put the facts before the American people and I thought they could get it. They didn't know how to do it and hadn't means to do it, yet they were paying to the United States insular government a million and a quarter dollars a month in duties on imports into Cuba, which was being expended for police, sanitation, education, etc. I told them that if they could get an infinitesimal part of this appropriated for publicity, it would help Cuba and help American producers. Through General Wood they got about one-tenth of 1 per cent of a single year's duties, or \$12,500, appropriated for that purpose. Then they couldn't get any more and were short, and I got Mr. Havemeyer to contribute \$2,500 more for this purpose. This money was expended in printing, postage, and clerk hire.

I told the whole story to the Senate Committee on Cuban Affairs, and the beet-sugar interests, which were opposing the treaty, sought to make it appear that something improper had been done.

If it is wrong to try and widen our markets for all American products, I was wrong in doing so. If it was commendable, I am entitled to credit. At any rate, I did what I thought was right for the greatest good of the greatest number, and those who know me will testify that I always do this; and that is my position on the bill under consideration, which I believe in its present form would be against the interest of the producers and shippers of the United States.

THURSDAY, *January 12, 1905.*

The committee met at 10.30 o'clock a. m., Hon. W. P. Hepburn in the chair.

Mr. DAVEY. I desire to move that the hearings in regard to all the bills relating to the increase of the power of the Interstate Commerce Commission be considered as closed January 23, and that the committee proceed to consider on January 24 the different bills before them.

The CHAIRMAN. That is inopportune now. It would be proper to consider a matter of that kind in executive session. Later on we will take that up.

Mr. Spencer, will you proceed, if you please.

STATEMENT OF MR. SAMUEL SPENCER, PRESIDENT OF THE SOUTHERN RAILWAY COMPANY.

Mr. Chairman and gentlemen, before going into the matter before us, I may say that it is not my purpose to discuss the subject in its entirety because it would be impossible within the limit of time that is now before us.

I am here representing, of course, among others, the Southern Railway Company, of which I am the executive; but not that company alone. As may not be known to the members of the committee, during the winter I am resident in Washington, where our chief operating offices are, and, growing out of that fact, several of the other railroads of the United States, with some of which I am connected, have asked me, after consultation, to do what I now propose. Therefore it is not one railroad's representation that I propose to make, nor is it the particular claim of any railroad or group of railroads. I have preferred, so far as I have anything to say to the committee, to put it upon the ground of a broad, open, and, I hope, a fair discussion of the principles involved in the question which the committee is considering.

To the present status we need devote very little attention. The Commission has had eighteen years of service and experience. It is a well-known fact that important results have been accomplished within that time through the law and by the Commission, and I want to emphasize the fact that that condition is recognized by the railway companies. The great, the very great, abuses and irregularities at which the act was originally aimed have largely been eliminated. The rebate, the secret contract, the discriminatory devices of various kinds were the rule instead of the exception in those days. Now the reverse is the case.

The Commission itself bears testimony that rates are substantially maintained. The law has been strengthened from time to time in order to enable the Commission and the courts to proceed more promptly, more efficiently, by more direct methods, to deal with these questions, and there is a large power now lodged in the hands of the Commission for the remedy of those offenses which are regarded as the worst, and which were so prevalent, and which led logically to the numerous complaints which were then made before the Congress or before the public or before the Commission.

I want to say emphatically, for a very large proportion of the railroads of this country—a very much larger proportion than I have any direct right to speak for, but I say it unhesitatingly—that there is no difference of opinion between the railroads, the country, the Congress, and the President on the subject that rebates are wrong; that they must be stopped; that secret and discriminatory devices of all kinds must meet with the same fate, and, to use the President's own expression: "The highways of transportation must be kept open to all upon equal terms." On that basis the railway companies are ready and anxious to aid and cooperate.

I might add, while I would not suggest, and do not think that any

additional legislation is required to strengthen the hands of the Commission in order to proceed against that particular class of abuses, that if such legislation does appear to the country, to your committee, and to Congress to be necessary the railways will certainly stand—and I have no hesitation in saying so—in a position of cooperation and aid toward that end. That particular phase of regulation of railways has already been pronounced by the Commission as fully covered by existing statutes. It becomes a question of the enforcement of the law.

The question before you, however, as I understand it, is not of that character, and I have alluded to it merely to emphasize the views which I have expressed on behalf of the railways, and for a reason which will come later in what I may have to say in connection with the proposition which is before you to give the Commission power to name a rate, after hearing and complaint, which it has been claimed will be a means of stopping rebates and irregularities. That I have no hesitation in denying, and I will treat it further as we go into that branch of the subject.

Now, in a general way, first, is there a necessity for such legislation? Let us review the situation as it has developed for the last eighteen years. Without burdening you with figures or occupying your time with elaborate statements, summed up, that situation is this: About 90 per cent of all the claims or questions of various kinds which have been presented to the Commission during that period have been adjusted without even formal hearings and decisions upon the part of the Commission. That certainly does not indicate either a defiant or a noncooperative position upon the part of the carriers of this country. Of the remaining 10 per cent, scarcely 2 per cent have been the subject of litigation. That is to say, 90 per cent have been disposed of without formal hearings or decisions upon the part of the Commission; 10 per cent have been the subject of formal hearings and decisions upon the part of the Commission, and less than one-fifth out of that 10 per cent—namely, 2 per cent of the total—have been the subject of litigation under the decisions of the Commission growing out of matters covered by the interstate commerce act. That is for the period of eighteen years.

Reducing the suits to figures, there have been within that period but 43 suits out of 194 cases which were decided against the railroads. The railroads acquiesced in four-fifths of those formal decisions, covering only 10 per cent of the total which were made by the Commission.

The litigation was upon 43 cases. Those cases grew out of various questions, but, as we are discussing the question of rates, I may say that out of the 43 which went to litigation 25 related to rates. In 22 out of the 25 the decision of the Commission was reversed by the courts. One case out of the 25 was affirmed absolutely by the courts, and two were partially confirmed and partially reversed.

Now, looking at general results, I ask what condition of affairs does this indicate in respect to the multitudinous rates over this country for eighteen years, with now 210,000 miles of railroad, and at the beginning of that period 135,000 miles of railroad, covering a country from the Atlantic to the Pacific and from the Lakes to the Gulf. Does the fact that a total of 43 cases of litigation have arisen, and that 25 cases have arisen with respect to rates, indicate that there is a necessity for legislation in respect to the regulation of those rates, when 90 per

cent, if you will allow me to repeat, of all the questions that have arisen have been disposed of without even a hearing by the Commission, and four-fifths of those on which they have rendered a decision have not required litigation in the judgment of either the railroads or the Commission, and the remaining one-fifth of 10 per cent, namely 2 per cent of the total complaints, have gone to litigation?

I shall not comment further upon the fact of how successful that litigation was, because it might have various causes. Certainly I do not mean to suggest to this committee any cause which is disrespectful or derogatory to that Commission. The Commission in its personality is certainly entitled to the respect of this country and ourselves. In its legal position as a tribunal of this country it has, and is entitled to the respect, cooperation, and aid of the railway interests in the carrying out of those purposes for which it was appointed, and those purposes were very important and the results have been very large.

I will come now specifically to the bills which are now before you, or, rather, to the bill, because I shall address myself only to one, namely, the Cooper bill, which is before you; and I shall not undertake in this limited time to discuss more than one phase of that, namely, the power which it proposes to confer upon the Commission, after hearing and complaint, and the decision upon its part that an existing rate is unreasonable, to substitute a rate therefor, to put it into effect at a fixed time, and the provision that it shall remain in effect thereafter, subject only, on the one hand, to change by the Commission in future, in the exercise of similar power, or, upon the other hand, of appeal to the United States courts upon the part of the railways, to set that rate aside; the rate, however, remaining in effect pending such appeal to the courts.

Various advantages and reasons have been assigned for the passage of such an act conferring such powers. They are, first, that it would be merely restoring a power which the Commission substantially for ten years has exercised. That has been repeatedly stated, officially and unofficially, directly and indirectly, and probably as often contradicted. Exactly what is meant by the denial I hope to make clearer to you. What is meant, exactly, by the assertion that they did exercise such power, I must confess that I am at a loss to understand. Certainly in the very first report to the Interstate Commerce Commission the chairman of the Commission distinctly stated in words that the Commission had no such power. It was reiterated by Commissioner Schoonmaker, and the citations which have been made as to the specific cases in which they exercised that power, I must be pardoned for saying, do not cover the case. There is abundant proof of record, to which I can refer you (but for the time I shall not do it, simply leaving it with you, if you desire), that it was claimed and asserted, not only by members of the Commission itself, but by lawyers, counsel for the railways, counsel for others, that the law did not give any such power to the Commission. When the question came to be reviewed by the courts, the courts were emphatic in stating that the power was never there. It is possibly useless for me to elaborate that any further. The authorities are there, and they can be given at any moment that you want them.

I come now to what I consider the only possible basis which could be made for the claim that the Commission once, and for ten years,

substantially exercised that power, namely, the cases which it decided during that period which did affect rates and did result in several cases in their being changed as directed by the Commission. I can cite you a case, or numerous cases, since 1897, where precisely the same thing has happened. The exercise of it at that time, or what is called the exercise of it at that time, was simply this: That the Commission took up those cases, investigated them, rendered a decision, and that decision in many cases was acquiesced in. The railroads did not contest the case. There is authority in the utterances of Judge (afterwards Justice) Jackson to the effect that in that respect the Commission occupied the position of a general referee for all the circuit courts of the United States in respect to such cases. Now, we all know, whether lawyers or not, that the decision of a referee frequently decides the case; that is, it is acquiesced in without further litigation. That is the history of those cases in which it has been claimed the Commission exercised the power of making rates.

The record of the last five years will show that there are numerous similar cases. In 1897 the decision was finally reached by the courts which it was claimed cut off a power of the Commission which it previously had. The reason that it arose was that the Commission undertook to name and to put into effect what it regarded as reasonable rates in contradistinction to what it claimed were unreasonable rates as fixed by the carriers, and it reached that famous case, the Maximum rate case, one of such magnitude and such importance that in mere self-preservation the numerous railroads against which it was aimed—for it was not one—had no alternative but to test that question. What the result of that test was we all know. It was not a cutting off from the Commission of any power which it had previously possessed. It was simply invoking the powers of the courts to prevent the exercise of what would have been a very disastrous action upon the part of the Commission under a power which it never possessed.

It has also been claimed—it is difficult to conceive that it is serious—that this power would be a weapon in the hands of the Commission to prevent rebates. This is what I alluded to at the beginning. A very few words should dispose of it. A rate fixed by the Commission can be rebated and evaded as easily as any other. Therefore it would not put a stop to that.

The claim has been made, I believe not officially, that with that power in the hands of the Commission it would act as a deterrent in the matter of secret rebating or other devices for evading the tariff rates. That could scarcely be considered a serious claim. If it should answer as such a weapon, the effect of the use of that weapon would simply be to punish not the guilty party who evaded the rate, because he was already accepting less, but to punish every innocent party that had obeyed the law and not evaded the rate; that is to say, if because there was to be a rebate the Commission might put all rates down to certain figures those who had not put the rates down would be the sufferers, because the party that had put the rate down, as I say, had already been accepting the lower rate, and therefore would suffer no punishment under the use of this particular weapon. Therefore it would be a weapon to punish the innocent and not to punish the guilty. If it is not to be used, it ought not to exist at all for that purpose.

Probably the most important claim in the whole situation is that such a power would enable the Commission to prevent discriminations

between localities. It is needless for me to say to this committee that the matter of adjusting rates between different localities—commercial, manufacturing, mining, and agricultural—is an extremely intricate and difficult question in any section of the country. It has been found exceedingly difficult within the State borders where such questions have arisen. To apply it to the whole United States of course broadens it out enormously. It is a question of deciding between ports, deciding between distributing centers and jobbing centers, between manufacturing centers, between mining centers, between agricultural and forest regions.

It is impossible to say, it is impossible even to estimate the enormous variety of questions that must arise in that connection, and therefore the question presents itself as to what is the best way to deal with it. The rates of this country—the relative rates, I mean, and I am speaking of relative rates alone—have already been adjusted in a certain sense. That adjustment is the result of long experience, long and sometimes bitter competition, not only between the carriers themselves, but between communities, because the carrier is invariably appealed to if one community feels that it can not put its product, whatever it may be, into some distant market which it thinks it ought to reach. It is not alone a question of carriers' rates. It is a question of prices. It is a question of quality of goods. It is a question of every item that enters into the problem as to whether a given article can be marketed at a given place or not. To argue that would be endless. But the result is that it has settled down to a measurable, fixed condition of affairs. It can never be absolutely fixed, because the affairs of commerce fluctuate always to an extent that prevents absolute stability. If absolute stability should exist there would be absolute stagnation in commerce.

Let us see what the result of this question of discriminations between localities has been for eighteen years since the passage of the interstate-commerce act. The facts, as recorded in the Interstate Commerce Commission's reports and the experience of the Commission, are these, and this comes from the Commission. I have stated what all of the litigation was, namely, that there were 43 cases of all kinds of litigation in eighteen years; there were 25 cases of litigation on rates. For the ten years prior to 1901 the Commission sustained 31 cases of discriminations between localities. (See Senate Doc. 319.) I use the ten years prior to 1900 because they happen to have been grouped by the Commission itself. This shows only an average of 3 cases per annum, and of these 31 cases only 1 case of discrimination between localities was sustained by the courts.

Now, admitting—and that is all I propose to argue before you gentlemen—admitting that the adjustment of rates between localities involving over 200,000 miles of railroad and 45 States is intricate, enormous—so enormous as to be scarcely within the range of contemplation of any statement that could be made about it—if that is the case, does the result of 31 cases going into court in ten years indicate that there is a necessity for giving to another authority than that which now has it the power to name the rates between those localities?

There is a feature of that which is the Commission's affair, of course, and not ours, but the Commission would be overwhelmed with applications for relief from discrimination. I think the town or the district or the section in this country of any importance which

does not feel in some form or other that it is discriminated against is very rare.

The adjustment between those localities is made by competition between railroads, some of which reach one locality and some another, and a decision is obliged to be reached from a commercial standpoint. It might be entirely different if all of these communities, or all these centers of industry of whatever character, were reached by all the railroads. It would then be entirely a different question. But the adjustment, such as it is, that now exists grows out of the fact of the earnest purpose of a railroad which reaches a given point to see that that point is protected and its products distributed against another point which it does not reach and into the markets of which it wants to put its products. That is the adjustment of competition, and it is not competition alone of the carriers, as I have already stated. It is the competition of commercial communities as well, and to undertake to adjust that solely with reference to the carriers will be to cover only one portion of that very complex and important subject.

The next point that has been made is that this legislation is necessary to prevent the making and the continuance of unreasonable rates, or rates unreasonable and unjust within themselves. Going back for a moment to the result of the experience of the Interstate Commerce Commission in its own decisions, and what has transpired where its decisions have been appealed to the courts for eighteen years, there has not been one single case of unjust and unreasonable rates—unjust and unreasonable per se—sustained by the courts of this country; not a single one. The chairman of the Interstate Commerce Commission himself has borne testimony to the fact that unjust and unreasonable rates per se have become obsolete; that they do not exist. Of course, I mean do not exist substantially; I am not denying that they are possible. But if they are possible, they are condemned by the existing law. They were condemned by the common law before the existing law was passed. Since the passage of the law in 1887 the power of the Commission has been materially increased by amendments to it. Finally, by the Elkins Act of 1903, they have been given what might be called almost summary powers, as complete and prompt and drastic as it is possible to give in respect to any offense against the law in any country where trial must precede conviction.

If there are unjust and unreasonable rates in existence, the remedy is at hand. We have seen that of the cases which have gone to the courts not one single charge of unjust and unreasonable rates per se has been sustained. Now I ask, gentlemen, if it is fair to the railroad interests, under those conditions, that the irreparable injury shall be inflicted upon the railroads of having that rate take effect on the findings of the Commission? If there had been numerous cases where rates had been adjudged unjust and unreasonable, and they had been found to be so, and the penalty of reducing them had been inflicted after long delays, and therefore an injustice had been done to others, the case might wear a very different aspect. But precisely the opposite is true. On trial they have not been sustained; and from that I think it is perfectly fair to argue and to answer that the necessity does not exist for taking out of the hands (even after hearing a complaint) of the railroad companies the making of those rates which, to a very large extent—not entirely, of course—are the subject of competition between carriers and competition between communities.

In this connection in your committee room several weeks ago I heard in person the statement made that this reason for the passage of this act was a potent one, namely, because rates were unreasonable, they were being raised extortionately; and as alleged proof of that the figures given in Senate Document No. 257 were placed before you, the figures being these, that the average rates per ton per mile on all the railroads in the United States for the year ending June 30, 1903, were thirty-nine thousandths of 1 cent per ton per mile higher than they were in 1899, four years previous. There is no denying that fact as stated in the Interstate Commerce Commission's report. It is probably proper to state, though, in passing, that the resolution which called for that information from the Interstate Commerce Commission requested a statement of the rates and of the effect on gross receipts and net of the railroads. The answer—

Mr. MANN. I think you said thirty-nine thousandths?

Mr. SPENCER. Thirty-nine thousandths.

Mr. MANN. It should be thirty-three thousandths, if you will pardon me.

Mr. SPENCER. I beg pardon, then; I am mistaken. I had that impression. I am speaking from memory, and my notes had it thirty-nine thousandths.

Mr. MANN. Well, I have a memorandum taken from the report of the Commission itself.

Mr. SPENCER. I beg pardon. I am very much obliged. That even makes it less. But at all events it does figure out \$155,000,000—

Mr. MANN. That is right, on my basis.

Mr. SPENCER. Yes, sir; I accept the correction with pleasure.

The fact is that the net results for that year were relatively smaller. It is well known that during that period there was almost a constant rise in the cost of material and labor in this country, so that the net results to the railroad companies were less in 1903 than in 1899; and it is an easy calculation to make that the railway companies paid out more to haul a ton of freight 1 mile the last-mentioned year than they did in the first-named year, and that the money that they got would not go as far in purchasing power as the dollar of 1899. But apart from that, we all know that the fluctuation of rates per ton per mile has, taking the average, gone steadily down. It happens in this particular resolution, whether by chance or otherwise I shall not undertake to say, that the lowest average rate for any year in the history of this country was taken, namely, 1899. From the formation of the Interstate Commerce Commission, or going back of that, if you please, until 1899, that rate went down steadily, and in the annual report of that very year—1903—the Interstate Commerce Commission took occasion itself to say that if, in meeting commercial depression, the railway rates were put down during such a period, it was nothing but fair that on a return of prosperity they should go up. —

The CHAIRMAN. Mr. Spencer, the hour has arrived when, under the rules of the House, this committee must adjourn. Will you continue your remarks in the morning? I think we have another order for to-morrow, but we have time enough to let you conclude.

Mr. SPENCER. At your pleasure, sir.

Mr. DAVEY. May I ask for an executive session to-morrow for the purpose of considering the motion which I offered?

The CHAIRMAN. Very well. The committee will be in recess until to-morrow morning at 10.30 o'clock.

(Thereupon, at 11.55 o'clock a. m., the committee adjourned until to-morrow, January 13, 1905, at 10.30 o'clock a. m.)

THURSDAY, *January 13, 1905.*

The committee met at 10.30 o'clock a. m., Hon. W. P. Hepburn in the chair.

STATEMENT OF SAMUEL SPENCER, ESQ., PRESIDENT OF THE SOUTHERN RAILWAY COMPANY—Continued.

The CHAIRMAN. Proceed, Mr. Spencer.

Mr. SPENCER. Mr. Chairman and gentlemen: At the point of interruption yesterday I was in the midst of the discussion of that statement or argument which had been presented to the committee in respect to the increase of approximately \$155,000,000 in 1903 as compared with what the revenue would have been on the same tonnage at the average rates which applied in 1899, the statement that that increase had taken place having been used as an argument that rates were rising in this country and were becoming unjust, unreasonable, and extortionate. Mr. Mann will pardon my repetition, because this has a particular bearing upon the difference of rates between 1899 and 1903, upon which difference the computations were made in respect to the tonnage of 1903 in order to produce the \$155,000,000.

I think Mr. Mann, on examining the question, will find that the average rate between those two years was thirty-nine thousandths of 1 per cent instead of thirty-three thousandths of 1 per cent. I should be delighted to accept the difference, or the correction made by Mr. Mann, because it would add force to what I have to say.

Mr. MANN. I understand—

Mr. SPENCER. But I think Mr. Mann was using the figures of 1899 and 1902, and I was using the figures of 1899 and 1903. Am I right?

Mr. MANN. Well, Mr. Spencer, it is very easy to get at what the exact figures were. The figures as I got them from the Interstate Commerce Report for 1899 were .724 of 1 per cent.

Mr. SPENCER. Yes, sir.

Mr. MANN. And the figures for 1903 were .757 of 1 per cent.

Mr. SPENCER. Well, I made those of 1902 as 0.757, and it is 0.763 for 1903, according to the reports themselves. I went back to the reports and not to Document 257. I went back to the Annual Report of the Commission.

Mr. MANN. I took the statement of the Interstate Commerce Commission, and unless I am mistaken—which might easily be—

Mr. SPENCER. It really is not material, except that if I should accept the figures as now suggested by Mr. Mann the increase would be less than the \$155,000,000, and I think we must stand on the point that the—

Mr. MANN. It does not affect the principle, of course.

Mr. SPENCER. It will not affect the principle in the slightest.

Now, as I said at closing, the year of the lowest average rate in the history of the country was in 1899 and that year was selected as the

basis of comparison. In the annual report of 1903 of the Commission this language was used, not having reference to the point that is before us, but to an entirely different question: That if rates are reduced during periods of commercial depression, it would be reasonable that they should be increased on the return of industrial activity. That may not be an exact quotation, but it is substantially so. I find I have it here. "When reductions have been made on account of commercial depression, it is difficult to see why corresponding advances may not be properly made with the return of business prosperity," is the wording.

Now, if that be true, and there can be no doubt about it, to reach fair conclusions in respect to that small increase of thirty-nine thousandths of 1 cent for the carrying of 1 ton of freight 1 mile it would certainly be fair to go back and look at what the average was. When the interstate-commerce law took effect the rate was over 1 cent. In 1903, the year on which this argument was made, it was 0.763. There is a reduction of over 25 per cent within the period since the interstate-commerce law was passed. If the railroads are to be judged—and they ought not to be; I am not saying that at all—adversely because during one particular period, from 1899 to 1903, the rate rose gradually; if that is to be argued as representing an extortionate raising of rates, the reduction from 1887 down to 1899, twelve years, from over 1 cent to 7.24 mills, ought to be put as a balance upon the other side of the account.

The fact is, however, that the increase which took place from 1899 to 1903 did not, as it would appear from the surface of the report and upon the statement and arguments which have been based upon it, indicate a raising of rates in this country at all. The average rate per ton per mile is always fluctuating. It is true that the average of all the fluctuations has been down continually except for short periods, but it is fluctuating more or less all the time. It would show a fluctuation from now until next July, and from next July until next December. If the rates were absolutely rigid and fixed and unalterable by any conditions whatever, there are other large and important elements entering into the question of how an average rate results than the mere point of what each individual tariff upon each individual article may be.

I have pointed out yesterday that even if there had been a raise of rates, that the dollar which the railroad company got for that business, for that particular year, 1903, would have purchased less in the way of its necessities in labor and material than it would have purchased in 1899, upon the same tonnage; and all this increase of that \$155,000,000 is based upon the theoretical view of the same tonnage. The \$155,000,000 is made up assuming that the tonnage of the two years was the same, and applying the average rate.

Mr. TOWNSEND. Which year do you assume the tonnage to be in?

Mr. SPENCER. Nineteen hundred and three was the year for which the tonnage was taken, the larger tonnage of the two. If there is an argument made upon the two, of course they took the larger tonnage. On the same basis the operating expenses increased per ton, or per unit of traffic, whichever you may call it, in a very much larger proportion than the rate per ton per mile increased.

Now, what were the causes which were operative? Various explanations have been made. The manifest one to look at first is the difference in the classes of tonnage. The statement has been erroneously made,

from what source I do not know at the moment, but I have seen it in print, and I am not sure that it has not been presented to this committee, that the amount of low-class tonnage, which takes low rates, increases more rapidly than the amount of high-class tonnage. Now, sometimes that happens and sometimes it does not. Of course if rates remain fixed and you get a larger proportion of low-class tonnage and a smaller proportion of high-class tonnage the average rate per ton of the total result will go down. Conversely, if a larger proportion of high-class tonnage is shipped and a smaller proportion of low-class tonnage the rate goes up.

There were two things that happened in 1899 and immediately thereafter which bore in a very important way upon that question. One was the movement of Government stores to the Spanish war. A great many of them moved at low rates. Under the land grants they all moved at reduced rates. They all moved, practically, at special rates made for the occasion. The year 1899 happened to be marked as the period of the lowest rates in the history of this country; by far the lowest, in the movement of what is probably the very largest single tonnage, and that is bituminous coal. After that the rates on bituminous coal became more normal. They were certainly abnormally low in 1899. That would have affected it.

Apart from that—I have not seen anyone state this fact, and the statistics bear it out—you will recall the period of depression which preceded by a couple of years 1899. That depression was very great, as you all remember, in 1896. The recovery in 1897, after the inauguration of Mr. McKinley, was slower than had been anticipated. It came in 1898, and the fiscal year 1899 reflected some of the results of that depression, although the revival of trade had been begun at that time.

It is a well-known fact, and it is easily susceptible of proof, if you want to burden yourselves with statistics, that when a period of activity begins in this country it begins in one of two ways, or both; and in that particular case it began in both. It begins with the movement of large crops of agricultural products, the great bulk of which move at low rates—extremely low rates—per ton per mile. Our export grain business is done at an exceedingly low rate, far below the average—scarcely more than half of the average for the total tonnage of the United States. It begins with the activity of the iron mills and the furnaces. Of course, therefore, the coal mine and the iron-ore mine and the coke oven all provide low-class freights. Therefore, the movement at the beginning of a period of prosperity is at a less average rate per ton per mile than if everything were in normal condition.

Now, then, you follow that along for three or four years, as the prosperity of this country developed from 1899 to 1903, marking the very highest period of activity and wealth and wealth production in the history of the country, and what is the result? The result of the movement of the large crops and their sale, the result of the operation of the blast furnace, and the rolling mill, and the coal mine, and the coke oven, is that money is diffused from one end of this country to the other. That is the time when people have money—the people at large—and during that period they had more of it than at any time in our history. That is when the high-class freights, the merchandise, the dry goods, the luxuries of all kinds begin to move, and move in larger numbers. Taking the total tonnage of the country—the agri-

cultural products in 1899 were 11 per cent of the total; in 1903 they were 9.56 of the total. The products of animals were 3.12 of the total of 1899, and they were down to 2.63 in 1903. The products of mines were 51.47 in the one case, in 1899, and 51.56 in the other, in 1903. The manufactures were up—

Mr. ADAMSON. Are you speaking of tonnage or rates?

Mr. SPENCER. Tonnage—tons of movement—combating the statement that although the average rate per ton per mile went up it was in the face of the alleged fact that low classes grow more rapidly in movement than the high classes.

Now, we have seen how those low classes dropped, the product of the mines standing practically still. The products of the forest went up slightly, and the product of the forest is at a high rate—from 10.89 to 11.67. We now come to manufactures, of which I spoke. It was 13.45 per cent in 1899 and it was 14.39 in 1903. The merchandise went from 4.49 up to 4.69. Miscellaneous commodities, which include the articles unclassified, the kinds not shown in the other classes, advanced from 5.25 in 1899 to 5.50 in 1903.

The fact is therefore true that the high-class freights increased more rapidly in amount than the low-class freights, and therefore there would have been an increase in the average rate per ton per mile if tariffs had stayed exactly where they were.

I have gone very much more into that than I intended, and I will just call attention to one more thing, as to whether that was a large increase, under the circumstances. The difference, as I have stated, was thirty-nine thousandths of 1 per cent per ton per mile. And it is spoken of as representing an enormous increase in rates and charges by the carriers in this country. In the year 1902 the Interstate Commerce Commission in its report, commenting upon the difference in rate per ton per mile—exactly the same subject—between the years 1897 and 1902, referred to the fact that that difference was forty-one thousandths of 1 per cent (you will observe that it was thirty-nine thousandths in the other case), and that was coupled with the statement that, in their words, "broadly speaking, the rates were about the same." Now, if a difference of forty-one thousandths of 1 per cent is "about the same" in commenting upon this subject in 1902, it seems scarcely reasonable to characterize a difference of thirty-nine thousandths in 1903 as "enormously" increasing the rates in this country. It illustrates merely the point of view.

Mr. MANN. What was the first year you named there?

Mr. SPENCER. 1897 as compared with 1902.

Mr. MANN. Have you made any calculation as to how much more the total freight bill would have been in 1903 if the freight rate per ton per mile in 1897 had been in force in 1903?

Mr. SPENCER. The freight rate? That difference is \$155,000,000. That is precisely the calculation which has been made, if I understand Mr. Mann's question.

Mr. MANN. No; the position that has been taken is that if the freight rate of 1899 per ton per mile had been in force in 1903, freight collected would have been \$155,000,000 less than actually was the case. Now, have you made any calculation as to how much more would have been collected if the freight rate per ton per mile of 1897 had been in force in 1903?

Mr. SPENCER. I have not made it, but you can make it approxi-

mately in a moment. The rate in 1897 was 0.798 and in 1903 it was 0.763. There are thirty-five thousandths upon the same tonnage as thirty-nine thousandths. It would have been about 11 per cent off of \$155,000,000.

Mr. RICHARDSON. Was there not a gradual decrease of railroad freights from the close of the civil war down to 1900?

Mr. SPENCER. At the close of the civil war I have not the figures. I have the figures back as far as 1870.

Mr. RICHARDSON. What was the cause of the sudden increase or raise of the charges from 1900?

Mr. SPENCER. It has not been sudden.

Mr. RICHARDSON. That is what I asked. Has it been sudden?

Mr. SPENCER. No.

The CHAIRMAN. He has been discussing that prior to your coming in at length.

Mr. RICHARDSON. I did not know it.

Mr. ADAMSON. I understand your idea to be that if in 1897 as high a character of goods had been shipped, they would have been charged in a higher classification, and the difference would not have been as much as \$155,000,000?

Mr. SPENCER. No; it would not. If the character of the tonnage had been precisely the same in the two years there would have been no such difference as \$155,000,000.

Mr. ADAMSON. The difference in charges would have been greater, because the goods would have been in a higher classification, and there would have been no change in the classification?

Mr. SPENCER. Well, that is true; and, if you will pardon me, the fact is in this case that there was more of the higher class.

Mr. ADAMSON. Of course—

Mr. SPENCER. And if you are going to make the comparison not only of the same rate per ton per mile, but of the same character of tonnage for the two years, the \$155,000,000 would not have worked out.

Mr. ADAMSON. Then if you apply the rates in 1897 to the character of tonnage in 1902, the difference would not be so great?

Mr. SPENCER. No. I say it would not, although I have not looked at it, because the relative amount of high-class tonnage was rising during the whole of that time after 1896.

Mr. TOWNSEND. Have not the railroads changed their classification, changing from the lower to the higher, during that time?

Mr. SPENCER. Sometimes, yes. On any wholesale basis, no. But there are fluctuations going on in classifications as there are in rates, all the time.

Mr. TOWNSEND. Can you state how much that change has been?

Mr. SPENCER. I could not. It would require a very intricate analysis for the whole country. No one railroad would have it, you know. We would have to go to the Interstate Commerce Commission to get it.

Mr. TOWNSEND. To make your argument complete, we ought to know that, ought we not?

Mr. SPENCER. Well, I think not; because we are necessarily dealing with it upon general principles. You could analyze it down to any point that you please, but I think the point is clear, irrespective of that, that the gradual rise in the average rate per ton per mile on all the tonnage of the whole country to the extent of thirty-nine thou-

sandths of one cent per ton per mile is not significant of any elevation of rates in this country, and that is the only point to which I am addressing myself—as to whether there is any indication that rates are being raised or becoming extortionate in this country.

Mr. ADAMSON. In changing classifications, do you ever lower the classification of any article in common use?

Mr. SPENCER. Frequently; in fact, the great majority of changes are in that direction.

Mr. RICHARDSON. What principle governs you in making your classification? Is it the articles or goods that are related to each other?

Mr. SPENCER. They are related to each other.

Mr. RICHARDSON. And when you establish a classification and put a rate upon it that embraces all of the articles or goods of that nature and kind?

Mr. SPENCER. Of that nature and kind.

Mr. RICHARDSON. And that are dependent upon each other?

Mr. SPENCER. Well, dependent upon each other or for any reason for convenience classed together. I do not know that I could give a better illustration of this very complicated subject than this, it has grown up so gradually. Originally it was simply a means of obviating the necessity of naming rates upon every commodity by getting together a class and saying that that particular class shall take a certain rate.

I do not know that I can give any better illustration of it than to say that when goods come through the custom-house they are classed. That is for convenience, because commodity rates upon all the commodities, everything that appears in the United States, would be endless, and it is a mere matter of convenience. Now, experience has demonstrated that a classification did not wholly answer the purpose; and therefore articles have been taken out of what are known as classes A, B, C, D, or 1, 2, 3, 4, and 5, and put in with commodities. Coal, for instance, got to moving in such large quantities that it was a class of itself. Pig iron moves in a class of its own. Cotton moves in a class of its own. Wheat and corn all move irrespective of the numbered classes.

Mr. ADAMSON. Just for information, if you will excuse me. When you make a classification that way, say in the third class or the fourth class, that is not the same classification throughout the whole country; it only applies to the particular railroads in a certain province or territory?

Mr. SPENCER. It is limited to certain railroads that have agreed to adopt that classification. That is all. It may be one or it may be a dozen.

Mr. ADAMSON. And the same articles or the same goods in any other section of the country may be classed entirely differently?

Mr. SPENCER. Yes, sir.

Mr. ADAMSON. And then, when you fix the class, for instance, in the territory in which your railroad or the others have agreed to a certain tariff, it only applies to that territory and none other?

Mr. SPENCER. Yes, sir; that is, the bill of lading is issued under that particular classification.

Mr. SHACKLEFORD. In that connection, would there be any objection, by either the shipper or the carrier, if there should be a tight and fast uniform classification for the country?

Mr. SPENCER. Theoretically I should say not, if it could be done; but what would happen would be this—and that has been the great obstacle in the way of doing it so far—that the classification, of course, fixes the rate unless you alter the tariff at the same time.

Mr. LOVERING. May I ask you—

The CHAIRMAN. I would like to have Mr. Spencer complete his answer first.

Mr. SPENCER. Yes, sir, The difficulties which have arisen are that the A road classifies a certain article in a certain class, say in California, and B road in New England classifies it in a different way, both of those classifications having grown up as a matter of practice in that particular region, and the rates having become settled upon that. Now, the rates on those two classifications may be entirely different or they may be the same. Such a coincidence might occur. But if you undertake to make it uniform, each road is going to say and each region is going to say: "Well, if I am to adopt that it throws my rates out of line. I have either got to lower certain rates to do it or I have got to raise certain rates to do it, and that will work harm or injustice."

Mr. SHACKLEFORD. It would not be any inconvenience to adjust the rates to a general and uniform classification?

Mr. SPENCER. It would be a great convenience, if it could be done.

Mr. SHACKLEFORD. Well, would it be an impossible task to adjust the rates to a uniform classification?

Mr. SPENCER. I could not answer that question as to whether it would be impossible or not. In the end, I do not suppose, in these matters, that anything is impossible; but to do it violently and suddenly would be impossible without a commercial upheaval of some kind. You would have a distorted condition of affairs.

Mr. ADAMSON. Do not different commodities predominate in different sections of the country?

Mr. SPENCER. Yes, sir.

Mr. ADAMSON. For instance, in California and Massachusetts oranges would be more important at one end and codfish at the other? (Laughter.)

Mr. SPENCER. Precisely.

Mr. ADAMSON. That is an exaggerated statement, of course, but it expresses my idea.

Mr. SPENCER. The classifications originally upon each road were made up with reference to that road. There was a time in this country when each railroad was a little territory within itself. It did not exchange business all over the United States as is done to-day. These classifications grew up from that primitive condition. They were not made primarily or originally to fit the present conditions. What has been done by a gradual process of evolution is that, as circumstances arose, certain commodities would become important in certain communities, and classifications would be made covering large territories and areas which would be adopted by roads similarly situated carrying similar products. That process of evolution is still going on, but it has by no means covered the entire United States, and except at the expense of commercial disturbance must be a gradual process. It is growing every day.

Mr. ADAMSON. I was only going to say that I think I can show you language of the Supreme Court in which they say that uniformity is absolutely impossible in the United States in commerce.

Mr. SPENCER. It is. And when all the business of this country moves at uniform fixed rates this country is through growing.

Mr. LOVERING. I would like to ask: Take, for instance, dry goods; manufactures are in one class, and the rate is made, say, from Boston to Atlanta at one rate for that class. Is it the same on the return from Atlanta to Boston as it is from Boston to Atlanta?

Mr. SPENCER. I can not answer that specifically with reference to those two points.

Mr. LOVERING. Is it not very much larger?

Mr. SPENCER. I can not answer it specifically.

Mr. LOVERING. Is it not very much larger?

Mr. SPENCER. The classification is very frequently different in the two directions, and I think as a rule it is different. In the trunk-line territory it certainly is the case.

Mr. LOVERING. Take it in the matter of dry goods; does it not cost a great deal more to ship dry goods from Boston to Atlanta than from Atlanta to Massachusetts?

Mr. MANN. It can not be possible that they ship any dry goods from Atlanta to Boston?

Mr. LOVERING. They do, sir; a great deal.

Mr. SPENCER. You will probably recall the fact, Mr. Lovering, that in the annual report of the Interstate Commerce Commission for last year it was stated that there were 165,000 tariffs filed in that one year with them by the railroads. You will therefore pardon my not knowing about the particular rates embraced in your inquiry.

Mr. SHERMAN. Mr. Spencer has stated the general principle, that the freight rate is frequently much larger in one direction than it is in the other.

Mr. SPENCER. Yes, sir; and that may be the rate itself, or by difference of classification.

Mr. SHACKLEFORD. Is that due to the fact that railroads are liable to have more demand for cars in one direction than in the opposite direction?

Mr. SPENCER. That is always the case. There is always an excess in one direction. Moreover, this is true, and you must not lose sight of that, because it is a prime factor in this situation, that out of New England and the Eastern States, from the importing ports, the movement of merchandise is very much larger inward than the movement of merchandise is from the interior to the coast, because our merchandise and manufactures are as yet in the eastern portion of this country, and the eastern portion of the country also does the importing. The interior of the country is a manufacturing territory of lower class goods than dry goods and things of that kind; that is, the highly finished products, and it is still predominantly an agricultural region. Now, the tariffs and the classifications are made east bound with reference to the convenient grouping of the particular products which prevail in that direction, going back to the point that the classification is a mere convenient grouping of the stuff that does move. If one class of stuff moves west, a classification is made with reference to that particular kind of movement.

Mr. LOVERING. Does that depend on the volume of it?

Mr. SPENCER. No; it depends upon the character and volume both.

As I say, a classification started as a mere matter of convenience to obviate having a thousand and one commodities to deal with, the idea

being to classify them as you classify imports at the custom-house. I am consuming a great deal of your time.

Mr. RICHARDSON. I understood you to say at the beginning of your statement that you were entirely in favor of a law prohibiting rebates?

Mr. SPENCER. Yes, sir; absolutely. You can not make it any too tight for me.

Mr. RICHARDSON. It can not be made too drastic to suit you, so far as you speak for your own company?

Mr. SPENCER. Yes; and I think I can unauthoritatively speak for more than 75 per cent of the railroads of this country.

Mr. RICHARDSON. Is the practice of rebates going on among railroads now?

Mr. SPENCER. No; not to any appreciable extent. It is practically a criminal act to-day. For me to say "no" absolutely would be like my saying, probably, that robbery is not going on in the United States to-day. I suppose it is, but I do not know it.

Mr. RICHARDSON. You do not know it?

Mr. SPENCER. I only mean to say this, that it is decidedly the exception. It is not countenanced by any honest, well-managed railroad in this country, and 95 per cent of all the railroads in this country would put their face against it just as emphatically as you would.

Mr. RICHARDSON. And the law to-day prohibits it?

Mr. SPENCER. Absolutely prohibits it, and it provides summary methods for the punishment of it.

Mr. RICHARDSON. Then no additional law that we might make here—

Mr. SPENCER. I expressed the opinion yesterday that I do not think any additional legislation is necessary for that purpose.

Mr. MANN. Before you go further, may I ask you a question about this \$155,000,000?

Mr. SPENCER. Certainly.

Mr. MANN. As I understand, the claim that \$155,000,000 more was collected for freight in 1903 than would have been collected at the rates in 1899 is arrived at by multiplying the total mile tonnage by the rate per mile tonnage, 0.724, of 1899?

Mr. SPENCER. Yes, sir; and 0.763 of 1903.

Mr. MANN. And that gives an increase of \$155,000,000 in freight. Now, then, would the converse also be true if that is the correct method of arriving at it? In 1896 it is claimed that the Interstate Commerce Commission had the power to say what was a reasonable rate, and it must be assumed that if they exercised that power the rates then in existence were reasonable; and in 1896 the rate—

Mr. SPENCER. It did not make a single one of them.

Mr. MANN (continuing). In 1896 the rate per ton per mile was 0.806 of a cent, or forty-three thousandths higher than it was in 1903?

Mr. SPENCER. Yes, sir.

Mr. MANN. Now, if the proposition is true that \$155,000,000 more was collected in 1903 than should have been collected on the rate in 1899, is it not true conversely that if the rate of 1896 had been in effect in 1903 there would have been nearly \$200,000,000 more collected than were in fact collected?

Mr. SPENCER. Yes, sir—well, I should not make it \$200,000,000.

Mr. MANN. Well, it is not quite \$200,000,000.

Mr. SPENCER. But it would have been considerably larger.

Mr. MANN. It would have been over \$160,000,000?

Mr. SPENCER. Yes; considerably over.

Mr. MANN. Now, is there such a difference in fact in the freight rates?

Mr. SPENCER. No, sir; I do not believe there was. It would involve an examination of every waybill that was made during that year to finally answer that question; but you can group the information and arrive at it very closely and approximately.

Mr. MANN. Was there such a reduction in the general average of freight rates between 1896, when the Interstate Commerce Commission claimed it had authority to fix rates, and 1903, when it admitted, by the Supreme Court decision, that it did not have authority? Was there such a reduction during that period of time as would make a difference of more than \$160,000,000 in freight?

Mr. SPENCER. No, sir; I do not think there was that difference in the tariffs. I think the difference was partially made up, just as I have stated about the \$155,000,000. I must say, in all fairness, that it was partially made up in the difference in the character of the movements, and not entirely in the rates. These rates which had been in effect were not changed to that extent. I have no hesitation in asserting that the average changes of rates wherever changes took place were reductions instead of increases. There may have been a few increases, but the great majority were decreases and always are.

The CHAIRMAN. Proceed, Mr. Spencer.

Mr. TOWNSEND. Did you assent to the proposition or statement of Mr. Mann that the Interstate Commerce Commission had the power, really, under the act, to declare what was a reasonable rate?

Mr. MANN. I said "claimed to have" the power.

Mr. SPENCER. No, sir; he said "claimed to have it." No, sir; I must distinctly disclaim that. I do not think that that power ever existed.

Mr. TOWNSEND. That they can not ever declare what is an unreasonable rate?

Mr. SPENCER. Yes; undoubtedly the law gives them that power.

Mr. TOWNSEND. That is the question I asked you.

Mr. RICHARDSON. Do you recall any instance for ten years after the existence of the act where they did exercise the authority of fixing a rate after they had declared a rate to be unreasonable?

Mr. SPENCER. They did not do that any more than they are doing it now.

Mr. TOWNSEND. That is not my question. I did not ask if you thought they had the power to fix rates, but if you now believe that the Interstate Commerce Commission has the right to declare what is an unreasonable rate?

Mr. SPENCER. Yes, sir; they have the right to make the declaration. We have also the right to dispute it in the courts. I am coming to that in a few minutes, if I am not consuming too much of the time of the committee. The question of the determination of what is a reasonable or an unreasonable rate is purely a judicial function under our law.

Mr. TOWNSEND. Has that question ever been passed upon directly by the Supreme Court, saying that this Interstate Commerce Commission has the right to declare what is an unreasonable rate?

Mr. SPENCER. I do not recall the language of the court on that sub-

ject. They have done that in many cases, and in two cases, as I recited yesterday, where there were questions of discriminations between localities they were sustained by the courts in it. They can declare a rate unlawful, and the law is that their declaration on that subject, with the evidence before them, is *prima facie* evidence when the question goes to the court. I would rather you would ask that question of a lawyer. I am not a lawyer.

Mr. CUSHMAN. As I understand your position, Mr. Spencer, it is that the Interstate Commerce Commission have the power to declare any given rate unreasonable, but they have not the additional power to declare and enforce what is a reasonable rate?

Mr. SPENCER. What they regard as a reasonable rate.

Mr. CUSHMAN. What they regard as a reasonable rate?

Mr. SPENCER. That is it, sir.

Mr. LAMAR. Do you think that power attempted to be conferred by Congress would be a constitutional power? Did you say that a while ago?

Mr. SPENCER. I am not a constitutional lawyer.

Mr. LAMAR. I understood you to say that. I was not quite sure.

Mr. SPENCER. No.

Mr. SHACKLEFORD. He said he was not a lawyer.

Mr. SPENCER. I did not state as to whether the law would be constitutional or not. I would not undertake to do that.

Mr. LAMAR. I thought you did say a few moments ago.

Mr. SPENCER. I might have a layman's view of it; but I could not speak as a lawyer.

Mr. LAMAR. I misapprehended a remark of yours; that is all.

Mr. SPENCER. Now, I shall have to run hurriedly over a few points and endeavor to show you that that particular power of substituting what they regard as a reasonable rate in the place of one which they regarded as unreasonable and to be condemned was not necessary either to protect the reasonableness of rates of this country or the relative rates between localities; was not necessary to give them power to enforce tariffs or to prevent rebates. Against the granting of such a power to that particular body I want to give some reason, and if you will pardon my saying it again it is that particular power that I refer to, not legislation on railroad questions. That I am not discussing at the moment, but only that particular power which would be prejudicial in many respects. In the first place, it would necessarily diminish the activity of competition between localities.

In another connection, which I touched upon yesterday, and upon which I shall say very little now, that activity of competition is largely made up, as I stated, of the desire of a railroad which does not reach a certain territory to put the products which are manufactured in its territory into the market against those which are manufactured in the territory which it does not reach. That produces a constant competition all the time, and not only that, but they have the active support of the merchants and manufacturers along the line of their road to put their products in the market. Now, if that power is to be taken from the railroads who are engaged in that contest with the shippers and the manufacturers and the merchants and the jobbers along their lines, necessarily their efforts will be to a greater or less extent neutralized. They would necessarily wait, if they were applied to to put down a rate as a means of developing additional business; they would

that they can not make an agreement among themselves in respect to traffic of any kind, whether reasonable or unreasonable. And I merely submit for your consideration in that connection that if any legislation is to take place in any form—I hope it will not be in this particular form, if it does—that it should include something that will insure that sort of stability of rates upon the one hand which is required by the law and upon the other that reasonable protection of the carriers in making charges that are at least reasonably high, in order to remunerate them for the service which they perform.

If you will look through the Interstate Commerce Commission's report, you will see three or four or five utterances to the effect that the rates are in many cases in this country entirely too low. Surprise is expressed in one case that the service can be performed at some of the rates that pertain upon the railroads.

If there is to be legislation, I merely throw out that suggestion that the carriers be relieved of that entirely anomalous prohibition which is put upon them of making reasonable agreement among themselves. They ought not to be entitled to make unreasonable ones. They ought not to be entitled to make any, possibly, that are not subject to public scrutiny.

Mr. RICHARDSON. Is not that "pooling," what you mean?

Mr. SPENCER. Oh, no. You can extend it until it is pooling, but it is not necessarily pooling.

Mr. SHACKLEFORD. It is a joint contract for through rates?

Mr. SPENCER. A joint contract for through rates. They are in existence all around. You put out a rate from Atlanta or from New York to-day for the several carriers, and despite the law that I have referred to, it is necessarily the case that these carriers have got to exchange their views. You can say they make no agreement, but they do exchange views, and issue the same rate on the same day. Nothing can stop it, you know.

Mr. ADAMSON. Would the advantage to the carriers from this opportunity to make an agreement be that they could recoup in other places for their losses where they are compelled to maintain these low rates, abnormally low, as you say?

Mr. SPENCER. Well, I do not think so, to any extent. I think it would have to be reasonable in itself. That is, if I understand your question, if they were taking a very unreasonable rate here, which they could not get out of in any way—

Mr. ADAMSON. I take it for granted that wherever these rates are abnormally low, as you said, it is for some reason of necessity, where you find that you have it to do?

Mr. SPENCER. Yes, sir.

Mr. ADAMSON. And therefore you think that if you had authority to make these agreements you could, in the general adjustment of the agreement, recoup those losses elsewhere?

Mr. SPENCER. No, sir. My idea was that the causes which lead to that unreasonable rate there might be removed with reference to that rate if a reasonable agreement could be made. I would propose for that authority—and I think I stated it accurately—

Mr. ADAMSON. Then you could raise those rates?

Mr. SPENCER. We could then raise that rate. The remedy is to allow the railroads to make a reasonable agreement for the maintenance of reasonable rates. If we found that we could not touch the

follow them. It is not a question as to what has been the practice, but what will the law authorize.

Mr. SPENCER. If I may interject there, I may say that I think any power given to any tribunal to name the maximum rate for the railways, the carriers of the United States, or to carry with it the right to name a maximum, would have no equity in it.

Mr. MANN. I call your attention to the specific proposition that is in the Cooper-Quarles Act. It is not the power to fix a maximum rate at all.

Mr. SPENCER. No; it is not.

Mr. MANN. It is the power to fix a particular rate.

Mr. SPENCER. That was my recollection, as I stated it from memory. I thought it would convey it.

Mr. ESCH. Would not that carry with it the power to raise as well as to lower?

Mr. SPENCER. I should think so. But I repeat I did not read it with that view, because in all frankness I must say I do not think that would arise as a practical question under it.

Mr. SHACKLEFORD. And in giving this power to fix rates it also gives the power to raise rates as well as to lower rates. Would not the ultimate tendency of it be to raise the rates on water transportation where they make it impossible for railroads to live in competition with water transportation?

Mr. SPENCER. At present the law does not apply to water transportation.

Mr. SHACKLEFORD. The Commission is seeking to have it do so.

Mr. SPENCER. I should say interstate commerce transportation by water ought to be covered, but you will find some of it that could not be covered.

Again, while undertaking to protect the shipper, under this bill there is no provision for the protection of the carrier at all. The Interstate Commerce Commission has stated in one of its reports that the rates in this country were in many cases too low. Now, if that be true, ought not a bill which undertakes to regulate against rates that are too high make some practical provision for regulating against rates that are unreasonably and improperly low? It may be said, doubtless will be—that has been the practice, at all events—that that is a subject on which the carriers would be expected to take care of themselves; and, of course, the burden of it must fall upon them. They can not call to their aid with any justice or fairness the arm of the Government to support their tariffs and their management. In the first place they would not receive it, and in the next place it would be impractical. I do not think that protection in the way of their raising a rate in order to equalize and regulate would be feasible. I do not think it would be successful in practice, and the only form that it can be given which I could suggest would be that the carriers should be relieved of the disability which they are now under of not being able to make reasonable agreements among themselves. The fact is that in order to maintain the rates as provided for in the interstate commerce law such agreements must be made. It can not be otherwise. Rates to be uniform and stable, as is intended by the law, to be public under all the circumstances, must be made with one carrier knowing what the other is doing with precisely the same traffic at the same time.

The interpretation which has been placed upon the antitrust law is

that they can not make an agreement among themselves in respect to traffic of any kind, whether reasonable or unreasonable. And I merely submit for your consideration in that connection that if any legislation is to take place in any form—I hope it will not be in this particular form, if it does—that it should include something that will insure that sort of stability of rates upon the one hand which is required by the law and upon the other that reasonable protection of the carriers in making charges that are at least reasonably high, in order to remunerate them for the service which they perform.

If you will look through the Interstate Commerce Commission's report, you will see three or four or five utterances to the effect that the rates are in many cases in this country entirely too low. Surprise is expressed in one case that the service can be performed at some of the rates that pertain upon the railroads.

If there is to be legislation, I merely throw out that suggestion that the carriers be relieved of that entirely anomalous prohibition which is put upon them of making reasonable agreement among themselves. They ought not to be entitled to make unreasonable ones. They ought not to be entitled to make any, possibly, that are not subject to public scrutiny.

Mr. RICHARDSON. Is not that "pooling," what you mean?

Mr. SPENCER. Oh, no. You can extend it until it is pooling, but it is not necessarily pooling.

Mr. SHACKLEFORD. It is a joint contract for through rates?

Mr. SPENCER. A joint contract for through rates. They are in existence all around. You put out a rate from Atlanta or from New York to-day for the several carriers, and despite the law that I have referred to, it is necessarily the case that these carriers have got to exchange their views. You can say they make no agreement, but they do exchange views, and issue the same rate on the same day. Nothing can stop it, you know.

Mr. ADAMSON. Would the advantage to the carriers from this opportunity to make an agreement be that they could recoup in other places for their losses where they are compelled to maintain these low rates, abnormally low, as you say?

Mr. SPENCER. Well, I do not think so, to any extent. I think it would have to be reasonable in itself. That is, if I understand your question, if they were taking a very unreasonable rate here, which they could not get out of in any way—

Mr. ADAMSON. I take it for granted that wherever these rates are abnormally low, as you said, it is for some reason of necessity, where you find that you have it to do?

Mr. SPENCER. Yes, sir.

Mr. ADAMSON. And therefore you think that if you had authority to make these agreements you could, in the general adjustment of the agreement, recoup those losses elsewhere?

Mr. SPENCER. No, sir. My idea was that the causes which lead to that unreasonable rate there might be removed with reference to that rate if a reasonable agreement could be made. I would propose for that authority—and I think I stated it accurately—

Mr. ADAMSON. Then you could raise those rates?

Mr. SPENCER. We could then raise that rate. The remedy is to allow the railroads to make a reasonable agreement for the maintenance of reasonable rates. If we found that we could not touch the

particular rate at all, and we wanted to recoup, as you suggest, by making it up somewhere else, with the law in the form I suggested, we would have to submit to some public authority that agreement which we proposed as a reasonable one. So that we could not establish an unreasonably high rate here in order to recoup for an unreasonably low one elsewhere.

Mr. RICHARDSON. To whom would you submit that agreement for supervision?

Mr. SPENCER. To the Interstate Commerce Commission.

Mr. RICHARDSON. Would you give them authority to say that it is unjust or unfair?

Mr. SPENCER. If it was not just we could not do it.

Mr. RICHARDSON. And if it is unjust, they would have the power to designate what the contract should be?

Mr. SPENCER. No. I would not suggest that they make the contracts between us.

Mr. RICHARDSON. But simply to pass on your contracts?

Mr. SPENCER. To have the power to annul it, or that it can not go into effect without their consent. That is better still.

Mr. RICHARDSON. I just wanted to understand that.

Mr. SPENCER. Again, the granting of that authority to name a rate, under the circumstances described in this bill, would inflict an irreparable injury upon the carrier in a case where the matter was appealed to the courts. The rate having already taken effect, if the courts should decide that the original rate of the railway company was reasonable and just, there would be no possible means for the railway company to recoup that loss. Now, the process is that the Interstate Commerce Commission has the power, and it is one of its duties, that having found what it regards to be an unreasonable rate, either by its own motion or after hearing, it shall condemn that rate. We have seen that in the great majority of cases, something over 90 per cent. where they have done that thing, the railway companies have acquiesced, and stated: "All right; we accept your judgment." But where it has gone into court, the Commission has not established one single case of an unreasonable rate per se, and they have only established two cases of discriminatory rates as between localities, that being less than 10 per cent of the total of the cases which have gone to the courts. If that is the case, is it not fair to the railroad companies that before a rate, on a record like that, is put into effect, the courts should pass upon it, if the railroad company is going to suffer irreparable loss if they finally gain the case?

Mr. ADAMSON. Right there, take the converse of that contingency: Say that they declare a rate to be reasonable and just, and you carry it up, and after years of litigation the courts hold that the adjudication of the Interstate Commerce Commission was correct, and that the rate they declared was the proper one, and allowed it to stand; is not the loss of the shipper irreparable?

Mr. SPENCER. Yes, sir; and that point harks right back to the one question: If I have been guilty of a crime, at what date after judgment should my punishment begin?

Now, you can cover that, if there is any doubt about it, and the court feels that it is a very doubtful case on presentation by letting the court require bond.

Mr. TOWNSEND. That could all be obviated by injunction, anyway, could it not?

Mr. SPENCER. No; the only thing subject to injunction under the Elkins Act, as I understand it, is a departure from established tariff rates, which are a violation of law. It is not a question of enjoining a rate which has not been adjudged unreasonable.

Mr. TOWNSEND. I mean during the time. If the railroad took an appeal in the case, they can enjoin during that proceeding?

Mr. SPENCER. Oh, yes. Now you have a case in point at once. The Interstate Commerce Commission has under consideration the lumber rates from the Southern States, Georgia, Alabama, and Mississippi particularly, to points north of the Ohio River, attacked as unreasonable. That case is now pending in court.

Mr. LOVERING. How long has it been pending?

Mr. SPENCER. It is in the form of a bill for an injunction now. The bond—that is what I was coming to—the bond has been given by the railroad companies to refund to shippers if the case goes against them.

Mr. LOVERING. How long is it likely to continue, if the case is not pressed?

Mr. SPENCER. Well, the Commission is holding the case, so our counsel tells me. The details I have not in mind.

Mr. RICHARDSON. I understood you to say that in the event of the power being given the Commission to fix a rate, after the rate had been investigated and found to be unreasonable and unjust, if the law should give the Commission authority to fix the rate, and if the question should go up to the Supreme Court, the railroad would sustain irreparable damage if the Commission had made a mistake. Now, do you not think that there would be a very strong likelihood of decreasing the probability of those damages if, after the Commission had authority to fix the rate, and the appeal was taken by the railway company to the Federal circuit court, where the appeal had been taken, either party, the railroad or the complainant, should be given the right to summon witnesses and bring them up there and test the question as to whether the Interstate Commerce Commission had fixed a fair and just rate? Would it not lessen the probability of your damages and throw a strong safeguard around the interests of the railroad and the public?

Mr. SPENCER. I do not see how.

Mr. RICHARDSON. You do not see how it would?

Mr. SPENCER. I do not think it would.

Mr. RICHARDSON. Would you not have a second trial on it? Would you not have a second opportunity in the presence of a Federal judge—

Mr. SPENCER. Yes; but if the rate is running all the time, the loss is going on, and there is no way we can get it back.

Mr. RICHARDSON. Suppose authority was given to the court to suspend the rate until that investigation took place?

Mr. SPENCER. That is all I am asking.

Mr. RICHARDSON. And then, after the investigation took place, and the circuit judge, under the evidence that was given, after this Commission had fixed the rate, concluded that it was a reasonable rate, and then the rate went into effect, and you took an appeal to the Supreme Court on the same question, would not that lessen the probability of your damage, because it would not run so long—or the shippers' damage, either?

Mr. SPENCER. If I understand you, Judge, your suggestion is simply to expedite the litigation, whatever it may be?

Mr. RICHARDSON. That is right.

Mr. SPENCER. We are willing to have it expedited. If, under due process of law, the thing can be decided in twenty-four hours, we would rather have it decided in twenty-four hours than to have it decided in forty-eight hours. But, in the meantime, we do not want that rate, which we have regarded as just and reasonable and which we put in for what we regarded as good business reasons, set aside; because that involves the punishment for a wrong thing before you have been adjudged by a competent tribunal to have done a wrong thing.

Mr. RICHARDSON. I was glad to hear you say that if there was to be any legislation upon that subject you would like to give your views—

Mr. SPENCER. That is all I am here presenting. Do not understand, gentlemen, that I am opposing all legislation with respect to the regulation of commerce. I am here arguing to the best of my ability why this particular legislation would not be effective on the one hand, and would be prejudicial against the interests of one important industry in this country, the carriers, on the other.

If, in the wisdom of Congress and of this country, legislation is necessary, all that the railway companies, so far as I have anything to say for them, ask is that this legislation shall be mature, carefully thought out, and shall protect both interests as well as one. I have no right to ask beyond that, and I do not intend to do so. I am merely trying to point out wherein this particular legislation would be harmful to us and not be effective in the direction in which it is aimed.

Mr. ADAMSON. You have no objection, if the law does not already provide for it, to an arrangement to prevent discrimination and secure the speedy termination of litigation?

Mr. SPENCER. Not the slightest. Not the slightest.

Mr. MANN. When you speak of discrimination, what do you mean by that, in answer to Mr. Adamson's question?

Mr. SPENCER. Well, I mean discrimination that really discriminates. I mean unjust and unreasonable and "undue"—I believe the letter of the statute is "undue"—discrimination.

Mr. ADAMSON. "Giving an undue advantage to one person or locality over another" is part of it.

Mr. SPENCER. The man does not live, and the body of men does not live, that can frame any law, or adopt any policy in the management of the carriers of this country, whether owned as they are now, or owned by the Government, or owned by any power—nothing exists that will do away with the alleged discriminations between localities. You can get rid of the discriminations between individuals. It is almost done away with. If it exists it is a crime and can be reached by law. I do not want for a moment, however, to be understood as indicating that we will agree to the adoption of something as a means, or cooperate in putting something into effect as a means, that is going to quiet the question of whether one community is discriminated against in comparison with another. I do not know, as I said to you yesterday, any community of any size that does not feel in some way that it is discriminated against in favor of some other community engaged in similar enterprises or business. That is going to continue, and if a law like this passes, it will grow a thousandfold.

Mr. ADAMSON. If some railroad touches two towns of equal size and importance, equally distant from a distributing center, and in one of

those towns that railroad meets competition and gives a low rate to people who already have a railroad and do not need it, and at the other town it is two or three times as much, is not that discrimination?

Mr. SPENCER. I am not sure of it. I do not think I understand—

Mr. ADAMSON. The towns being of the same size and the distance from the distributing center being the same, one of the towns needing help and the other not needing help?

Mr. SPENCER. I do not know what you mean by one of the towns needing help and the other not. I never saw one that did not need help, or did not think it needed it. All you can ever do from the carrier's standpoint is to adopt something that is commercially reasonable. It may not be equal. You can not measure it as to distance or locality. You can not measure it by reason of a particular position, because no two positions are alike. You must settle—

Mr. ADAMSON. But I made two alike.

The CHAIRMAN. I wish that the interruptions would not occur so frequently when the witness is in the midst of an interesting statement.

Mr. ADAMSON. Well, I understood that Mr. Spencer was willing to answer questions.

Mr. SPENCER. Gentlemen, I am perfectly willing to answer any questions. The one point with me is that I do not want to consume too much time of the committee. I am at your disposal.

Mr. ADAMSON. I am perfectly willing to wait until you are through and then ask my question.

Mr. SPENCER. If it takes a week I am perfectly willing to stay here and answer all questions. I simply wish to avoid occupying too much time of the committee.

Mr. ADAMSON. When you are through with your statement I will ask you what I wish to know.

Mr. SPENCER. I will hurry through with it. There is not very much more of it.

Mr. ADAMSON. I think that is better myself.

Mr. SPENCER. As I have said, the bill inflicts the irreparable injury in the loss of revenue which is going on while the case is pending. That is not the only part of that irreparable injury. You may run into this difficulty: We will assume that the Commission has put a rate into effect and a railroad company has appealed it to the courts. Now, that very fact that the rate goes into effect is a material deterrent, irrespective of the reasonableness or unreasonableness of the rate itself. One of the greatest difficulties we have to deal with—and that is the reason that our unreasonably low rates exist, to a very large extent, because something has occurred—it may be one thing or it may be another; it may be fierce competition; it may be an abortive effort to create new business that did not work out—for various reasons these low rates have gone into effect; and one of the most serious difficulties we have to deal with in practice is to ever get them back. It is not only that people are loath to pay an increased rate above what they have paid. That is natural. None of us like to pay more for a thing than we paid yesterday or the day before yesterday or last year, if we can help it. Beyond that, however, and apart from any individual or personal reluctance in paying more, the rate having gone into effect, the commerce of that particular article, its distribution, the commerce of that particular community, becomes settled around that rate.

Not only have you got the question, then, by the time it goes out of

the courts, to deal with as to whether that rate was a reasonable or an unreasonable one, but you have got the additional question then of expediency to deal with, in view of the altered situation. It may have been perfectly agreeable to everybody almost, except, probably, one complainant, to pay that. They have been convinced by that time that the experiment, if you may so call it, of putting in that rate did not bring in expected results; that it is a disappointment, and yet the very fact that it is there, that the commerce of that section of the country is being carried on in respect to that condition of affairs as thus changed, will be a material reason why that rate could not be put up again; and there is an irreparable loss on a rate which the courts, I am assuming, would finally adjudge (as it has in most of the cases that have come up) was not an unreasonable rate. And yet somebody whose judgment was brought to bear upon it, other than the carrier that controlled that rate, has put it down, and the sum total of the result is that the carrier permanently loses that much revenue, when the commerce of the country would have gone on just as smoothly, just as successfully, to the same volume that it did before.

Lastly, with respect to the objection that it would be conferring anomalous powers upon one body. I might elaborate that at length, but in view of the limited time I shall say very little about it, leaving it, probably for able counsel to follow me hereafter.

The Interstate Commerce Commission, under the present law, is an investigating and a prosecuting body, with administrative powers as well. They entertain claims that are presented to them. They have the power, and it is their duty, in certain cases, to institute proceedings against the carriers with reference to their rates or their practices, or their management in general.

Now, it is proposed to confer by this bill the right for the Commission, upon hearing and complaint—and not upon their own initiative, I quite recognize that—to hear and determine whether a rate is reasonable or unreasonable. That step taken alone is in the nature of a court. That is a judicial function beyond a doubt. It has been decided so by the Supreme Court. There is no question about it, that a determination primarily of what is a reasonable or an unreasonable rate is a judicial function. Now, the Interstate Commerce Commission in that sense is not a court. It has never been so constituted. Its trials are not conducted in accordance with the established rules of evidence of the United States courts, and yet it is suggested in that bill that it shall have the specific right to do what only a court can do—declare a rate unreasonable per se.

Now, if that is the case, they are exercising there a judicial function.

Let us take the next step in what would be their procedure in that case. Having taken that judicial action and condemned a rate as unreasonable and unjust, as if they were a court, their next step is, under such authority as is now proposed, to place in existence under its order a new rate—a rate which shall govern for the future. They were dealing up to that point with a rate which related to the past or the present. Now it is proposed that they substitute for that rate, which they have condemned as unreasonable, a rate for the future. To what department of the Government does that belong? That is distinctly, under the law, under the decisions of the courts, a legislative function. The power to name a future rate, so far as it is invested in government, is purely a legislative function.

Now, you are going to have this position. You have got, under the existing law, and it is proposed in this bill to change it, a body which is a prosecuting body. It has been described by Justice Jackson, as I said to you a day or two ago, as follows:

The functions of the Commission are those of referees, or special commissioners, appointed to make preliminary investigation and report upon matters for subsequent judicial examination and determination. In respect to interstate-commerce matters covered by the law, the Commission may be regarded as the general referee of each and every circuit court of the United States upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and imposed by the act.

You have, therefore, got a prosecuting body exercising administrative functions, as they do to-day, whose findings are *prima facie* evidence when the cases go to court. It is proposed to invest them, in the next step, with a purely judicial function of condemning and setting aside a rate because in their judgment it is unreasonable; and when that judgment is pronounced they can not possibly have sat with all the powers and functions of a court, and under all the practices of a court, and a rate ought not to be condemned until that has been done. Yet it is proposed that this Commission condemn it and set it aside. Then it is proposed that, having set it aside as a judge, they shall immediately assume the functions of a legislature and say what shall take place for the future.

I submit to the committee whether, if there is to be legislation upon this question—and I am not saying that there is not to be and ought not to be; I am passing the question for a moment and will come back to it—if that is the case, is it not worth while to stop now and consider whether the particular legislation which is now proposed is safe, is proper, is such that will stand and be effective, and so far as the carriers' interest is concerned. What is possibly equally as important, is it fair to the carriers' interest?

I am sure that Congress will not enact, I am sure that this committee will not recommend, a thing which, after mature reflection, is regarded as unfair to one of the very great, if not the very greatest, industrial interest in this country. All we have the right to ask, and all I ask in behalf of those that I represent, is that the subject shall be given a very thorough and careful consideration before action is taken.

Let us see exactly what the bearings of all this are going to be. Pause to consider its alleged necessity upon the one part, and upon the other if it is not necessary; its expediency upon the third, and then the promise of success whenever it is enacted.

I have occupied a great deal of your time and I must still apologize. There is only one point more, and I will pass it before I make you a suggestion.

It has been claimed—and I am sorry I have not time to elaborate that—that the granting of this power is not the granting of the total rate-making power. It is a big subject, and I will call your attention to only one case, the maximum-rate case, in which it was decided against the Commission that they did not have the power to make rates. That case involved 2,000 rates in one decision. It means not only that upon complaint they have the right to take up any one rate or set of rates. It means, sooner or later, that not only will they have the power to do it, but the greatest misfortune of all would be that the making of them all would be practically forced upon them. They could not escape it.

Now, I am going to very briefly make a few suggestions.

(1) Form an interstate-commerce court, or so increase the number of judges of the existing court that a special interstate-commerce court can be formed from their number, which shall have special jurisdiction over all cases arising under the interstate-commerce act and its amendments: this court to pass upon all rates adjudged by the Commission on complaint and hearing to be unreasonable before the rate shall take effect, there being no appeal from the decision of this court to the Supreme Court, except upon questions of law, and no stay during such appeal.

(2) Bring the private-car lines, fast-freight lines, and the water lines doing a through interstate traffic within the jurisdiction of the interstate-commerce act.

(3) Relieve the carriers of the existing prohibitions against making reasonable agreements among themselves for the purpose of maintaining lawful rates, the agreements and the rates to be subject to the previous approval of the Interstate Commerce Commission.

(4) Enforce the existing laws, not only as a matter of administration of law and justice, but as the most effective means of eliminating the number of complaints.

I want to reiterate that we are not here asking that there shall be no legislation. If in the wisdom of Congress it is thought proper, I suggest that it should take this line: Form an interstate commerce court, or probably better still, give special functions to special sittings of the circuit courts of the United States. Give to the Commission the right to name the rate or suggest the rate, subject to appeal to the courts. That will leave the question where it is if the railroads acquiesce, and they have acquiesced in nearly 90 per cent of all the cases. Now, if they do not acquiesce and take it to the courts, let the rate remain in effect, and the railroad company give bond until the court—I mean the circuit court alone, this interstate commerce court, either a special court or made up from judges of the other circuit courts sitting here or any where else—decides that the rates shall go into effect. Then it goes into effect, and there is no suspension after that in appealing to the Supreme Court on questions of law. Begin at the circuit court, stop the appeal at the circuit court, except in cases of law going to the Supreme Court, and that appeal on a law point to the Supreme Court not to stay the proceedings.

Mr. ESCH. Suppose you have a separate court?

Mr. SPENCER. Give it exactly the same power with the right of an appeal on questions of law to the Supreme Court without stay of proceedings.

Bring the necessary water lines engaged in interstate commerce which are competitive with rail carriers—the fast-freight lines, the private-car lines—all of them within the purview of the interstate-commerce law. All of those three which I now mention are exempt.

Relieve the carriers, as I have already suggested, of the anomalous prohibition now against them that they must maintain uniform rates, and at the same time be prohibited from forming any agreement as to what those rates shall be; and give them the authority, under the supervision of the Interstate Commerce Commission, to make reasonable traffic arrangements among themselves, those traffic arrangements to be in writing, to be submitted to the Interstate Commerce Commission before they take effect, and if approved by the Interstate Commerce

Mr. MANN. It would have been over \$160,000,000?

Mr. SPENCER. Yes; considerably over.

Mr. MANN. Now, is there such a difference in fact in the freight rates?

Mr. SPENCER. No, sir; I do not believe there was. It would involve an examination of every waybill that was made during that year to finally answer that question; but you can group the information and arrive at it very closely and approximately.

Mr. MANN. Was there such a reduction in the general average of freight rates between 1896, when the Interstate Commerce Commission claimed it had authority to fix rates, and 1903, when it admitted, by the Supreme Court decision, that it did not have authority? Was there such a reduction during that period of time as would make a difference of more than \$160,000,000 in freight?

Mr. SPENCER. No, sir; I do not think there was that difference in the tariffs. I think the difference was partially made up, just as I have stated about the \$155,000,000. I must say, in all fairness, that it was partially made up in the difference in the character of the movements, and not entirely in the rates. These rates which had been in effect were not changed to that extent. I have no hesitation in asserting that the average changes of rates wherever changes took place were reductions instead of increases. There may have been a few increases, but the great majority were decreases and always are.

The CHAIRMAN. Proceed, Mr. Spencer.

Mr. TOWNSEND. Did you assent to the proposition or statement of Mr. Mann that the Interstate Commerce Commission had the power, really, under the act, to declare what was a reasonable rate?

Mr. MANN. I said "claimed to have" the power.

Mr. SPENCER. No, sir; he said "claimed to have it." No, sir; I must distinctly disclaim that. I do not think that that power ever existed.

Mr. TOWNSEND. That they can not ever declare what is an unreasonable rate?

Mr. SPENCER. Yes; undoubtedly the law gives them that power.

Mr. TOWNSEND. That is the question I asked you.

Mr. RICHARDSON. Do you recall any instance for ten years after the existence of the act where they did exercise the authority of fixing a rate after they had declared a rate to be unreasonable?

Mr. SPENCER. They did not do that any more than they are doing it now.

Mr. TOWNSEND. That is not my question. I did not ask if you thought they had the power to fix rates, but if you now believe that the Interstate Commerce Commission has the right to declare what is an unreasonable rate?

Mr. SPENCER. Yes, sir; they have the right to make the declaration. We have also the right to dispute it in the courts. I am coming to that in a few minutes, if I am not consuming too much of the time of the committee. The question of the determination of what is a reasonable or an unreasonable rate is purely a judicial function under our law.

Mr. TOWNSEND. Has that question ever been passed upon directly by the the Supreme Court, saying that this Interstate Commerce Commission has the right to declare what is an unreasonable rate?

Mr. SPENCER. I do not recall the language of the court on that sub-

courts to which the appeals have to go. For instance, the defendants questioned my right to bring the complaint. They said that I was not a shipper. I was, in fact, merely bringing the complaint as a citizen of New York who was subjected to very high coal tariff, to very high prices for coal. That point was appealed. Then the defendants declined to produce certain books and papers—contracts—which were essential and important in the case, and they refused to answer questions, and those points were appealed.

The CHAIRMAN. Were these appeals taken separately or in one appeal?

Mr. HEARST. I think they were taken in one appeal.

The CHAIRMAN. Yes.

Mr. HEARST. First before the circuit court, Judge Lacombe, of the southern circuit of New York, and he decided in favor of the defendant and against the Commission, and then it was appealed to the Supreme Court, and the Supreme Court upheld the Commission in every point, but, nevertheless, those appeals took altogether about a year's time.

The CHAIRMAN. How much time was consumed in the hearings before the Commission?

Mr. HEARST. I suppose the rest of the time was consumed in the hearings.

The CHAIRMAN. How long was it?

Mr. HEARST. About another year.

The CHAIRMAN. How long was it after the institution of your proceeding before the Commission put the thing in such shape that it might be appealed?

Mr. HEARST. The appeals were taken, I think, after hearings had been going on for several months. I would not say how long, exactly. The total time has been from November, 1902, down to this date, and the final arguments, I believe, are to be made before the Commission on February 7; that is, next month.

Mr. RICHARDSON. There was as much time consumed in the delay before the Interstate Commission as there was in the appeals before the higher courts?

Mr. HEARST. Just about, I should say; yes, sir. They were about equal, I think.

Mr. KYLE. Both of you appealing; both parties appealing the case?

Mr. HEARST. In the first case the defendant appealed and in the second case the Interstate Commerce Commission appealed to the Supreme Court.

Mr. KYLE. Then there were two separate appeals, each of you having appealed from some decision?

Mr. HEARST. Yes, sir. The Interstate Commerce Commission ruled and then appealed from the decision of the circuit court which was wrong. They appealed to the Supreme Court, and the books and papers were produced.

Mr. RICHARDSON. Did I understand you as having made any special complaint about the matter of delay, either before the Interstate Commerce Commission or before the appellate court?

Mr. HEARST. No, I have not made any complaint about that. In my bill I have tried to provide clauses that would remedy that.

Mr. RICHARDSON. By establishing precedents?

necessarily say: "Well, if I put that in, that is regarded as a reasonable rate. The very fact that I put it in is almost a conclusive argument—it is conclusive against me—that it is a reasonable rate that I am willing to submit to if the business pays me."

The moment the right to make rates is given to a governmental body there is a power other than the other railroad, and the power of a mind from a certain distance to put the corresponding rate right in against it. Therefore they will wait. And that is what happens to-day in the States where they have commissions exercising any power to make rates. The initiation of rates upon the part of the railroads is—I will not say entirely, because that would not be wholly true—but it is partially true that the railroads stop initiating new rates in those territories.

Mr. SHACKLEFORD. Right at that point, which it seems to me is a crucial point in this whole controversy: As between those two communities, would the Commission have the power to raise a rate from one point rather than lower the rate from the other in order to preserve the equilibrium which they would seek to preserve by the regulation of rates? Take a case which I submitted to a witness the other day: Supposing that Eau Claire and La Crosse, Wis., are competing points for a general central market; that the rate from Eau Claire is supposed by the Commission to be reasonable and still Eau Claire can not successfully compete with La Crosse, would the Commission in such a case as that be authorized under this law to raise the rate from La Crosse to Chicago rather than to lower the rate from Eau Claire to Chicago?

Mr. SPENCER. Is that the question?

Mr. SHACKLEFORD. Yes, sir; that is the question, whether that would be a power granted by this bill, and whether it would be a wise one to exercise.

Mr. SPENCER. I must say, in the first place, that I have not read the bill with reference to that particular question, as to any power that might be conferred to raise a rate. I confess, in all frankness, that that aspect of it had not occurred to me as a practical question. If they have the right under the act, and I am answering without accurate knowledge of the wording at the moment, to name a reasonable rate in the place of one that they adjudged to be unreasonable, I should say that legally and technically it would carry with it the power to set the low rate up instead of putting the high rate down.

Mr. TOWNSEND. But the Interstate Commerce Commission has always ruled that that was a bill solely in the interests of the people, have they not?

Mr. SPENCER. I have so understood it; and I have not thought that purpose was as suggested by Mr. Shackleford, for the reason, I suppose, that I never read it with that view.

Mr. TOWNSEND. I agree with you on that.

Mr. SHACKLEFORD. Have not the Commissioners themselves said that they wanted the power to do that very thing that I have suggested, as between the two very towns that I have cited?

Mr. TOWNSEND. I do not know that. I only knew that the rulings of the Commission have been, as I understand it, heretofore, along the line that they are exclusively for the people, and that is why I do not like it.

Mr. SHACKLEFORD. But there will be other commissioners that will

Mr. HEARST. Yes, sir; more or less. I do not remember all the details of this case, especially the figures, prices, cost, and so forth. I would have to refer to memoranda for that.

The CHAIRMAN. You could not give us those figures as to the value of the coal in the mines, the cost of mining, the cost of transporting from the mines, and so forth?

Mr. HEARST. I do remember the cost of transportation from the fields to New York, which was developed to be not greater than 80 cents; and I remember that the rate is \$1.55. So that the profit is about 100 per cent, and the Interstate Commerce Commission had made a futile attempt to lower that rate.

The CHAIRMAN. Could you give the committee some idea of the value of the coal in the bank and of the cost of mining it?

Mr. HEARST. I can only do it—

The CHAIRMAN. Just approximately, if you can?

Mr. HEARST. I can do it only in this way, that I believe the defense entered a claim which they thought was to their advantage, that after the freight had been estimated at the rates that are published—that is, \$1.55—it only left a profit of about 7 cents a ton.

Mr. TOWNSEND. How much?

Mr. HEARST. Seven cents.

Mr. TOWNSEND. Seven cents?

Mr. HEARST. Yes, sir. Now, I think that is correct, but I can not recall all these figures without referring to documents.

The CHAIRMAN. That was their claim?

Mr. HEARST. Yes, sir.

The CHAIRMAN. You did not concede that to be true?

Mr. HEARST. We are disposed to accept it in a way, because it shows the outrageous character of the rate. They undoubtedly make a great deal of money, and it makes no difference to them, because they own the railroads and the coal mines, and if they fix the rate at such a point that it brings them a profit of only 7 cents a ton the independent operator, who does not own the railroads, but only a mine, is at a very distinct disadvantage, while the railroad operator, who owns both the mines and the railroad, can make his profit out of the railroad. That was their claim, as you say, Mr. Chairman, but I suppose we might be disposed to accept it on account of the deduction to be drawn from it.

The CHAIRMAN. According to that estimate, if the selling price of the coal was \$5 a ton in the market, the cost of transportation \$1.55, and there was only 7 cents of profit to them, then the value of the coal and the charges for mining must be something over \$3, according to that claim of theirs.

Mr. TOWNSEND. That includes the profit of the dealer?

The CHAIRMAN. No; I have included that in the profit of 7 cents.

Mr. RYAN. Was that profit of 7 cents independent of the \$5 selling price?

Mr. HEARST. I presume so.

The CHAIRMAN. That was substantially their claim?

Mr. HEARST. Yes, sir.

The CHAIRMAN. Was that true?

Mr. HEARST. I think not. But I would hesitate to go into the figures of this case very definitely without something to refer to, because figures are elusive things.

that they can not make an agreement among themselves in respect to traffic of any kind, whether reasonable or unreasonable. And I merely submit for your consideration in that connection that if any legislation is to take place in any form—I hope it will not be in this particular form, if it does—that it should include something that will insure that sort of stability of rates upon the one hand which is required by the law and upon the other that reasonable protection of the carriers in making charges that are at least reasonably high, in order to remunerate them for the service which they perform.

If you will look through the Interstate Commerce Commission's report, you will see three or four or five utterances to the effect that the rates are in many cases in this country entirely too low. Surprise is expressed in one case that the service can be performed at some of the rates that pertain upon the railroads.

If there is to be legislation, I merely throw out that suggestion that the carriers be relieved of that entirely anomalous prohibition which is put upon them of making reasonable agreement among themselves. They ought not to be entitled to make unreasonable ones. They ought not to be entitled to make any, possibly, that are not subject to public scrutiny.

Mr. RICHARDSON. Is not that "pooling," what you mean?

Mr. SPENCER. Oh, no. You can extend it until it is pooling, but it is not necessarily pooling.

Mr. SHACKLEFORD. It is a joint contract for through rates?

Mr. SPENCER. A joint contract for through rates. They are in existence all around. You put out a rate from Atlanta or from New York to-day for the several carriers, and despite the law that I have referred to, it is necessarily the case that these carriers have got to exchange their views. You can say they make no agreement, but they do exchange views, and issue the same rate on the same day. Nothing can stop it, you know.

Mr. ADAMSON. Would the advantage to the carriers from this opportunity to make an agreement be that they could recoup in other places for their losses where they are compelled to maintain these low rates, abnormally low, as you say?

Mr. SPENCER. Well, I do not think so, to any extent. I think it would have to be reasonable in itself. That is, if I understand your question, if they were taking a very unreasonable rate here, which they could not get out of in any way—

Mr. ADAMSON. I take it for granted that wherever these rates are abnormally low, as you said, it is for some reason of necessity, where you find that you have it to do?

Mr. SPENCER. Yes, sir.

Mr. ADAMSON. And therefore you think that if you had authority to make these agreements you could, in the general adjustment of the agreement, recoup those losses elsewhere?

Mr. SPENCER. No, sir. My idea was that the causes which lead to that unreasonable rate there might be removed with reference to that rate if a reasonable agreement could be made. I would propose for that authority—and I think I stated it accurately—

Mr. ADAMSON. Then you could raise those rates?

Mr. SPENCER. We could then raise that rate. The remedy is to allow the railroads to make a reasonable agreement for the maintenance of reasonable rates. If we found that we could not touch the

particular rate at all, and we wanted to recoup, as you suggest, by making it up somewhere else, with the law in the form I suggested, we would have to submit to some public authority that agreement which we proposed as a reasonable one. So that we could not establish an unreasonably high rate here in order to recoup for an unreasonably low one elsewhere.

Mr. RICHARDSON. To whom would you submit that agreement for supervision?

Mr. SPENCER. To the Interstate Commerce Commission.

Mr. RICHARDSON. Would you give them authority to say that it is unjust or unfair?

Mr. SPENCER. If it was not just we could not do it.

Mr. RICHARDSON. And if it is unjust, they would have the power to designate what the contract should be?

Mr. SPENCER. No. I would not suggest that they make the contracts between us.

Mr. RICHARDSON. But simply to pass on your contracts?

Mr. SPENCER. To have the power to annul it, or that it can not go into effect without their consent. That is better still.

Mr. RICHARDSON. I just wanted to understand that.

Mr. SPENCER. Again, the granting of that authority to name a rate, under the circumstances described in this bill, would inflict an irreparable injury upon the carrier in a case where the matter was appealed to the courts. The rate having already taken effect, if the courts should decide that the original rate of the railway company was reasonable and just, there would be no possible means for the railway company to recoup that loss. Now, the process is that the Interstate Commerce Commission has the power, and it is one of its duties, that having found what it regards to be an unreasonable rate, either by its own motion or after hearing, it shall condemn that rate. We have seen that in the great majority of cases, something over 90 per cent, where they have done that thing, the railway companies have acquiesced, and stated: "All right; we accept your judgment." But where it has gone into court, the Commission has not established one single case of an unreasonable rate per se, and they have only established two cases of discriminatory rates as between localities, that being less than 10 per cent of the total of the cases which have gone to the courts. If that is the case, is it not fair to the railroad companies that before a rate, on a record like that, is put into effect, the courts should pass upon it, if the railroad company is going to suffer irreparable loss if they finally gain the case?

Mr. ADAMSON. Right there, take the converse of that contingency: Say that they declare a rate to be reasonable and just, and you carry it up, and after years of litigation the courts hold that the adjudication of the Interstate Commerce Commission was correct, and that the rate they declared was the proper one, and allowed it to stand; is not the loss of the shipper irreparable?

Mr. SPENCER. Yes, sir; and that point harks right back to the one question: If I have been guilty of a crime, at what date after judgment should my punishment begin?

Now, you can cover that, if there is any doubt about it, and the court feels that it is a very doubtful case on presentation by letting the court require bond.

Mr. TOWNSEND. That could all be obviated by injunction, anyway, could it not?

Mr. SPENCER. No; the only thing subject to injunction under the Elkins Act, as I understand it, is a departure from established tariff rates, which are a violation of law. It is not a question of enjoining a rate which has not been adjudged unreasonable.

Mr. TOWNSEND. I mean during the time. If the railroad took an appeal in the case, they can enjoin during that proceeding?

Mr. SPENCER. Oh, yes. Now you have a case in point at once. The Interstate Commerce Commission has under consideration the lumber rates from the Southern States, Georgia, Alabama, and Mississippi particularly, to points north of the Ohio River, attacked as unreasonable. That case is now pending in court.

Mr. LOVERING. How long has it been pending?

Mr. SPENCER. It is in the form of a bill for an injunction now. The bond—that is what I was coming to—the bond has been given by the railroad companies to refund to shippers if the case goes against them.

Mr. LOVERING. How long is it likely to continue, if the case is not pressed?

Mr. SPENCER. Well, the Commission is holding the case, so our counsel tells me. The details I have not in mind.

Mr. RICHARDSON. I understood you to say that in the event of the power being given the Commission to fix a rate, after the rate had been investigated and found to be unreasonable and unjust, if the law should give the Commission authority to fix the rate, and if the question should go up to the Supreme Court, the railroad would sustain irreparable damage if the Commission had made a mistake. Now, do you not think that there would be a very strong likelihood of decreasing the probability of those damages if, after the Commission had authority to fix the rate, and the appeal was taken by the railway company to the Federal circuit court, where the appeal had been taken, either party, the railroad or the complainant, should be given the right to summon witnesses and bring them up there and test the question as to whether the Interstate Commerce Commission had fixed a fair and just rate? Would it not lessen the probability of your damages and throw a strong safeguard around the interests of the railroad and the public?

Mr. SPENCER. I do not see how.

Mr. RICHARDSON. You do not see how it would?

Mr. SPENCER. I do not think it would.

Mr. RICHARDSON. Would you not have a second trial on it? Would you not have a second opportunity in the presence of a Federal judge—

Mr. SPENCER. Yes; but if the rate is running all the time, the loss is going on, and there is no way we can get it back.

Mr. RICHARDSON. Suppose authority was given to the court to suspend the rate until that investigation took place?

Mr. SPENCER. That is all I am asking.

Mr. RICHARDSON. And then, after the investigation took place, and the circuit judge, under the evidence that was given, after this Commission had fixed the rate, concluded that it was a reasonable rate, and then the rate went into effect, and you took an appeal to the Supreme Court on the same question, would not that lessen the probability of your damage, because it would not run so long—or the shippers' damage, either?

Mr. SPENCER. If I understand you, Judge, your suggestion is simply to expedite the litigation, whatever it may be?

Chicago to New York—the first-class rate—is 75 cents a hundred, and that complaint is made before the Commission, and the Commission decides that 50 cents a hundred is a reasonable rate. Suppose that that decision is appealed to the court which you propose to create and the court finds that that rate is unreasonably low. Now, under your bill, would the court, finding that 50 cents a hundred was unreasonably low, have the power at the same time to say what is a reasonable rate for the future?

Mr. HEARST. No, sir, not at all. The court will simply find that the finding of the Commission was unjust or confiscatory, and it would remand the case.

Mr. MANN. And have the Commission act again?

Mr. HEARST. Yes, sir. I suppose in the court's decision the Commission would find some light for its guidance in its further action.

Mr. ADAMSON. What reason can you assign that we should not empower a court to fix that rate right there?

Mr. MANN. You do not run against the question of the Constitution in your bill which has been bothering us, then?

Mr. HEARST. No. I simply wanted, in citing these cases, to show that Congress has a right to delegate its legislative powers to this Commission, and that it has a right to institute a court to review the action of the Commission, and to enforce by writ the orders of the Commission when they are approved.

Mr. ADAMSON. What reason do you assign, if a court may review the finding of a commission and determine it to be wrong, that we can not empower that court at the same time to render a final judgment in the matter?

Mr. HEARST. It seems to me to be outside of the functions of the court to fix a rate.

Mr. ADAMSON. If the court can review and undo a part of the action of the Commission, why can not they finish the job, if we authorize them to do so?

Mr. HEARST. It might be decided that you could not authorize them to do so.

Mr. ADAMSON. That is not the question that has concerned me. The idea that comes to my mind is, why should we take charge of other people's property and run their business without their consent?

Mr. HEARST. We are here to represent the people and to act for them, and if the majority of the people of this country are being oppressed in any way and unjustly treated, or unreasonably treated, we ought to seek some means of preventing it, even if we should to some extent regulate the business of the railroads without their consent.

Mr. ADAMSON. We have passed that proposition, and everybody has agreed that it is right to take charge and establish a tribunal to fix rates for the railroads. Now, you propose to constitute a separate body to review the findings of this Commission, to which we have delegated the power to fix rates, and that body may hear the case and decide that everything that has been done is wrong; and yet you say that you can not empower that court to finish the job and declare a final rate that shall prevail?

Mr. HEARST. It might be done, but I do not think that you can constitutionally do it. It may be so, but I do not think so; and consequently I did not put in my bill that clause.

Mr. ADAMSON. You have had in mind the decisions in the Supreme Court in which they have said they can not confer that authority upon the courts.

Mr. RICHARDSON. If I understood the question a few minutes since, you said in your answer that your bill did not come into conflict with the idea that there had been an expression on the power of Congress to delegate its legislative authority to the Interstate Commerce Commission; that is what I understood you to say, that this bill avoided that. If I understand your bill, from the reading that I have given it, it is, first, to give the Interstate Commerce Commission, where a rate has been challenged and investigated and found to be unreasonable, the power and authority then to substitute what is considered a reasonable and just and fair rate, right then and there?

Mr. HEARST. Yes, sir; to fix a rate.

Mr. RICHARDSON. And that, possibly, under certain conditions, and under limitations of time, it should go into effect. You have then constituted the interstate commerce court, to which an appeal can be taken. Now, when you get to that court, the court has only the authority to confirm or remand?

Mr. HEARST. Yes, sir.

Mr. RICHARDSON. That is all the authority that it has?

Mr. HEARST. Yes, sir.

Mr. RICHARDSON. Now, do you not think when you clothe the Interstate Commerce Commission with the authority to substitute a reasonable rate for a rate which is thought unreasonable, that that is vesting the Interstate Commerce Commission with the legislative authority?

Mr. HEARST. Yes, sir.

Mr. SHACKLEFORD. That has never been questioned by anybody.

The CHAIRMAN. I call your attention to this provision in the bill on page 9:

Said court shall thereupon, as speedily as may be, proceed to review the order appealed from, as to its justness, reasonableness, and lawfulness upon the said record returned by the Commission, and thereupon if, after hearing the parties, said court shall be of the opinion that such order is unjust, unreasonable, or unlawful, it shall modify, set aside, or annul the same by appropriate decree, or remand the cause to the Interstate Commerce Commission for a new or further hearing; otherwise the order of said Commission shall be affirmed.

Mr. HEARST. Yes, sir.

The CHAIRMAN. Now, there is the authority conferred to modify a rate.

Mr. HEARST. No, sir; I beg your pardon. At least, it is not necessarily meant to confer authority to modify a rate. It is meant to confer authority to modify orders of the Commission. Those orders do not all relate to rates. In my opinion it could not constitutionally modify a rate, but it could constitutionally modify other orders of the Commission, and it is only authorized to do what it can do constitutionally—at least, what we think it can constitutionally do.

The CHAIRMAN. Yes. Then if it can or could have the power under a law to perform this act—this legislative act, so called—then it could modify the order that would say a rate of 25 cents, for instance, is a just rate, and it could make it 22 cents, or it could make it 27 cents?

Mr. HEARST. Yes, if it has the constitutional right to do it, it could do it.

The CHAIRMAN. But you think that it has not the constitutional right?

Mr. HEARST. I think that it has not the constitutional right, but I think that it has the constitutional right to modify other orders of the Commission, which do not relate to rates, which might relate to classifications or schedules, or any of a number of other things.

The CHAIRMAN. Then we might not give to the Commission the power to fix a rate, or the court. Could not Congress require the court to review the action of the Commission fixing a rate, to say whether that rate is just and reasonable, and, if not, what rate would be just and reasonable, and then say that that rate, so found by them to be just and reasonable, should be the rate hereafter to be charged?

Mr. HEARST. Of course the court does that as far as it is constitutional for it to do it. It does it to this extent, that in rendering an opinion and in remanding the case to the Commission it gives its reasons for its opinion—its reasons why the rate is considered unreasonable—and the Commission, guided by that opinion, goes ahead and fixes the rate, with its legislative powers, as I do not think the court can fix is as a judicial tribunal.

The CHAIRMAN. In that instance the court would not be fixing the rates in contemplation of law; but the legislative act comes in there then, after it has completed its duty, and says that that rate that they have named shall be the lawful rate that shall be charged.

Mr. SHACKLEFORD. Now, in that connection, I want to ask a question.

The CHAIRMAN. I would like to have Mr. Hearst answer that—that is, if he has studied that branch of it.

Mr. HEARST. Of course I am a layman and I can not put my opinion up against that of distinguished lawyers, but I do not think that the court has the right to do that. I think that it has simply the right to pass on the findings of the Commission, and if it disapproves of the findings of the Commission it remands the cause to the Commission and the Commission goes ahead and fixes another rate in accordance with the decision of the court; but the decision of this legislative body to fix a rate does fix the rate, and the court, with its judicial power, reviews the action of the Commission.

The CHAIRMAN. After that, they having this power of reviewing, acting in this manner you have just spoken of, they remand the matter to the Commission, and the Commission, under the law, would then be required to fix the rate as suggested by the court. Now, the question I have suggested is, whether the legislature could do that without the necessity of remanding the case and the consumption of that time.

Mr. HEARST. I understand you, sir.

The CHAIRMAN. Because if the Commission carries out the suggestion of the court and fixes that particular rate, it will simply be exercising a legislative function that Congress has conferred upon it.

Mr. HEARST. Yes, sir.

The CHAIRMAN. Now, why, by this broad declaration that the rate that they have determined shall be the future rate to be charged, can not they avoid all that difficulty at the time, and fix future rates?

Mr. HEARST. I think it is simply a question of the constitutionality of that method.

Mr. SHACKLEFORD. I would like to make a suggestion right there.

Mr. WANGER. It would be desirable, if the court has the power,

that it should determine the matter without any further proceeding. Do you not think so?

Mr. HEARST. I do not know whether that would be more desirable than the procedure proposed in this bill.

Mr. SHACKLEFORD. In that connection, under the provision that this bill now contains authorizing the court to review and modify or remand, if the court should find it is clothed with constitutional power to fix a rate instead of a rate that had been fixed by the Commission, would it not have authority to do that under the provision of your bill which says that it might modify an order?

Mr. HEARST. Most certainly it would have power to do it.

Mr. SHACKLEFORD. Would not the matter that the chairman speaks of be embraced in your bill under that clause, giving it the power to modify a finding of the Commission?

Mr. HEARST. I think so.

The CHAIRMAN. I was under the impression that the power of the Commission to act after the remanding of the case in conjunction and in harmony with the suggestion of the court would depend upon the act of Congress that gave them this legislative power to fix the rates. In other words, the Commission borrow their power from the courts. Now, it occurs to me that if we could do that, about which I have no doubt, we could also, without any question, by enactment say that the rate which was modified by the Commission—that they had determined would be a just rate—might be legislated into virility and force by such language as I have used: "And this rate, so determined, shall, after notice, be the lawful rate to be charged for this service."

Mr. HEARST. The point is that the bill provides that, if it is constitutional.

The CHAIRMAN. No; I think not. Oh, it provides—

Mr. HEARST. It provides it in the word "modify."

The CHAIRMAN. Yes; but it does not contain this other, to my mind essential, provision, that the rate, as it is modified, shall be thereafter the lawful rate. Then, the rate gets its sanction and its power from this sentence of the law, this declaration.

Mr. HEARST. It seems to me that the bill does give the court that power, provided that power can be constitutionally given to the court, by the use of the word "modify." But I say it is only a matter of my opinion. I do not presume to put my opinion up against yours; but my opinion is that Congress can not give the court that power; but if it can, the court has it under the phraseology of my bill, and if it can not, then that phraseology applies merely to other orders where the court obviously has the power.

The CHAIRMAN. I am afraid that you do not get my idea with regard to this matter. I am trying to avoid the difficulty of conferring this legislative power upon a judicial body.

Mr. HEARST. Yes, sir.

The CHAIRMAN. I say, I think there may be very great difficulty in doing it; and we may not have the power to do it. I am trying to avoid it by requiring there what may be perhaps considered a ministerial act, namely, after they have investigated one of these cases, and found that the rate is unreasonable, which we undoubtedly may do, then requiring them to go one step further and say what would be a reasonable rate, not for the purpose of their putting that rate into

effect, not for the purpose of making that action a part of a decree that would be carried out as a decree, but simply for the purpose of stating a fact; and then the law comes in and says that that rate which they have thus named shall be the future rate to be charged. I am afraid that you did not get the idea that I had in this suggestion. I have not any doubt myself about our power to do that, and I think that is the solution of this constitutional difficulty.

Mr. KYLE. Would not that be in effect the same as if the Commission then established that rate?

The CHAIRMAN. No; it would not be the same, because it then becomes the direct act of the Congress.

Mr. ADAMSON. The witness is now right at the point where I had him when I asked him my last question, and I would like to go on from there if you have finished.

The CHAIRMAN. I am through with this, if Mr. Hearst gets my idea.

Mr. HEARST. I think I do; but I do not see the advantage of a doubtful method of fixing a rate by a court when the clearly constitutional method of fixing the rate by a commission is available.

The CHAIRMAN. Have you thought of this matter, and have you an opinion as to whether this method would be operative and would overcome that constitutional difficulty?

Mr. HEARST. Of course I did think of the various difficulties, and doubtless that, or something like that, occurred to me; and in framing the bill in this way it seemed to me the possible difficulties—all possible difficulties—that might arise would be avoided, because there is no question of the powers as given to the Commission and as given to the court, as herein set forth. And the delay is inconsiderable compared with the delays that occur now. The greatest saving of time and machinery and expense is provided for in this bill. And it insures, I think, beyond question the procedure of the Commission and the court being constitutional and being supported by the Supreme Court.

Mr. ADAMSON. Now, Mr. Chairman, this matter that I want to pursue will not disturb your line of questions. It is entirely in line with yours.

I was asking you, Mr. Hearst, a few minutes ago, what reason you could give why, in constituting a court for review of the finding of the Commission with authority to judge the rates fixed by that Commission, and to adjudge what its rates should be, it could not be empowered by us, endowed with the authority, to declare what would be a just and proper rate, and why we should not then, in the same act, legislate that that should be the future rate.

Mr. HEARST. Yes, sir.

Mr. ADAMSON. And you said in answer to Mr. Mann that perhaps you could not do that. You did not fully answer that. Now, I want to know, when this court is constituted by us with power to say what a just and proper rate would be, if we could not by enactment, the same act, provide that that rate so found by them should be the future rate? There has never been any decision to the effect that that could not be done, has there?

Mr. HEARST. There has never been any decision of the Supreme Court as to this court, because this court has not yet been established; but it has been decided to be unconstitutional to give that authority to a court.

Mr. ADAMSON. What provision of the Constitution says that?

Mr. HEARST. The clause of the Constitution separating the executive, legislative, and judiciary.

Mr. ADAMSON. I am trying to get your views, now. I notice that Judge Lamar made a suggestion to you which I did not hear. He is a good lawyer, of course—

Mr. HEARST. You may be equally confident that I am not, and I am very willing to hear a suggestion, because I suppose you are more anxious to get the real facts of the case than you are to get my views.

Mr. LAMAR. I suggested the fact of the broad distinction between the legislative and judicial functions.

Mr. ADAMSON. I asked him if he knew of any other reason except that distinction.

Mr. LAMAR. That is broad enough.

Mr. HEARST. I can only repeat what I have said, that under this phraseology—

Mr. ADAMSON. I am not asking you with reference to any bill. I have no idea that any bill now before Congress will become a law. We are trying to find out what is right, and to make and report a bill, which I believe will be done. I am asking you the abstract question as to doing or not doing the particular thing. Now, you do not think that the provision as to the integrity and keeping separate of the three departments of the Government would prohibit the legislation suggested to you by the chairman?

Mr. HEARST. I think that it might, and I think that if it did prevent it, my bill would stand, and if it did not prevent it, they would be able to proceed under the word "modify," as you wish them to proceed, and it does not seem to me advantageous to go the length of putting in a clause which might be considered unconstitutional, when they have the privilege, under the phraseology that exists in this bill, of doing the very thing that you desire them to do.

Mr. ADAMSON. Can you tell me how it would be mixing the two departments under the Constitution, under the law we are going to pass, to declare that whatever rate the court shall declare would be or would have been a just and reasonable rate, shall become the law? The court has not a thing to do with making the law. This Congress makes the law, and it seems to me that it provides for the judicial interpretation.

Mr. HEARST. All right if it can do that; it can do it under this bill.

The CHAIRMAN. Taking this act of yours, and leaving the word "modify" just as it is, and all of that sentence just as it is, would it strengthen it to add, in the appropriate place—I do not know just where it would come—a provision that the rate so approved or so modified by the court should be the lawful rate thereafter to be charged by the carriers? Would that strengthen it?

Mr. HEARST. That assumes that the court may modify a rate?

The CHAIRMAN. Yes.

Mr. HEARST. I have not assumed that.

The CHAIRMAN. What is the office, then, of the word "modify?" That relates to some other proceeding in your mind other than the —

Mr. HEARST. Any orders of the Commission that the court can modify. Now, it obviously can modify certain orders of the Commission, and it can possibly modify all orders of the Commission, and if it can not it will be confined to those which it can constitutionally modify. If it can modify the rate it will go ahead and modify, and

state a definite rate and fix a rate; but I repeat I do not think the court can fix a rate.

Mr. TOWNSEND. As I understand it, your bill makes provision for the Interstate Commerce Commission to take testimony necessary, and if a rate shall be found unreasonable should determine what is a reasonable rate. Now, if that is not satisfactory to the defendant, he takes an appeal to this interstate court that you have provided?

Mr. HEARST. Yes, sir.

Mr. TOWNSEND. And that interstate court passes upon the lawfulness, if I may use that word, to cover all cases in which an appeal may be taken—the lawfulness of the order of the Commission. And if that court finds that the Commission has made a lawful rate, then that rate immediately stands, does it not?

Mr. HEARST. Yes, sir.

Mr. TOWNSEND. If it finds it has not made a lawful rate, then it is remanded for further hearing?

Mr. HEARST. Yes, sir.

Mr. SHACKLEFORD. Unless modified?

Mr. TOWNSEND. No; I do not want to say “modified.” Now, I am talking on the supposition, as I agree with Mr. Mann on that, that it seems to me that the Supreme Court would hold that the court could not make that rate. As I understand from your bill here, a rate does stand, if it is decided by the Supreme Court that the Commission made a lawful rate?

Mr. HEARST. Yes, sir.

Mr. STEVENS. Let me ask one concrete question, to get it in such shape that we can find the distinction. Suppose that the railroad was charging 12 cents a hundred, and that rate was challenged on the ground that it was unreasonable, and the Commission made an order fixing it at 8 cents a hundred; then suppose that an appeal for review was taken, and the case went to this court on that. The person who challenged that rate demanded reparation for the injustice done in the difference between 8 cents and 12 cents a hundred, and demanded that no greater rate in the future should be charged than the just and reasonable rate. Now, the rate fixed by the Commission was 8 cents a hundred, and it was brought to this court, and the court said that 8 cents a hundred was too low, and that 10 cents a hundred was a just and reasonable rate, and ordered reparation for the past and enjoined them from charging more than 10 cents in the future. That is constitutional. That is a perfect exercise of judicial authority up to that point, is it not? Your bill would give the court authority to do that in that kind of a case?

Mr. HEARST. May I have that question read to me?

Mr. STEVENS. I think I can probably restate it more plainly. Suppose that a rate of 12 cents a hundred is charged by a railroad company, and that rate is challenged by the Commission on the ground that it is unfair and unjust and unreasonable, and the man who brings the complaint demands reparation due to him on account of that unjust charge. The Interstate Commerce Commission hears the case, as provided by your bill, and fixes the rate at 8 cents a hundred as a just, fair, and reasonable rate, and grants him reparation. A review is then taken to the court provided for in your bill. On that review the court makes this decree, that the rate of 8 cents is confiscatory—too low—and that a rate of 10 cents is just, fair, and reasonable, and grants

him reparation for the past, and enjoins the railroad against charging more than 10 cents for the future. Is not that a perfect exercise of judicial authority authorized by the Constitution in such cases?

Mr. HEARST. It seems to me that that is merely a more complicated way of stating the previous proposition—that the court has a right to fix the rate?

Mr. STEVENS. I am just asking your opinion on that subject. Does that confer upon the court that equitable authority to enjoin for the future the exercise of an illegal rate, up to a certain point?

Mr. HEARST. I have endeavored to frame this bill so that the court would have authority to act up to its constitutional right.

Mr. STEVENS. If it should be held that that was an exercise of judicial authority, that the court would be obliged to declare, in view of that provision, what was a reasonable rate for the past years, and to compel reparation, it would exercise its equitable functions and forbid charging any more than an equitable rate for the future, which it seems to me it has a right to do now, has not Congress a right, then, to declare that a rate for that class of business, under those circumstances, is a fair, just, and reasonable rate, and should be the rate for the future for everybody? Has not Congress a right to do that?

Mr. HEARST. Yes, sir.

Mr. SHACKLEFORD. If Congress has the right to do that, is not that right given in the words authorizing the court to modify the orders of the Commission?

The CHAIRMAN. No, sir.

Mr. MANN. I think you will agree the Supreme Court has decided that the judicial authority has not the power of determining what is a reasonable rate for the future. We understand the decisions to be that way; that it has always declared that the judicial authority has the power to declare what is a reasonable rate for to-day, or what was a reasonable rate when their service was rendered in the past.

Mr. HEARST. Yes, sir.

Mr. MANN. Now, would it not be entirely competent, in accordance with the suggestion made by the chairman, for us to require the court to decide in a certain case what is the reasonable rate at the time of the hearing; that the rate in existence, not a future rate, is reasonable, and then to legislatively say, when that has been adjudicated, when the court has decided what is a reasonable rate at the time of the hearing, that that rate shall be the reasonable rate and enforced by the courts for the future, that being a legislative act?

Mr. HEARST. I doubt it, but possibly it can do that.

Mr. MANN. Can there be any question about it? It is not the court declaring what is a reasonable rate for the future. It is the court exercising its common-law jurisdiction.

Mr. LAMAR. The rate that you speak of is the rate already in litigation and pending before the court to be passed upon, or is it a supposititious rate?

Mr. MANN. Suppose that we provide that a complaint shall be made as to an existing rate, any shipper would have the authority to bring a common-law suit. We may provide a different form of action, requiring the court or Commission to determine what is the reasonable rate at the time. That is the common-law duty of the court. And when that is adjudicated, why can not we legislatively say that that shall be considered and be the reasonable rate for the future?

Mr. TOWNSEND. Does any other bill have any other object in view than that?

Mr. MANN. Every other bill, and everything else, except what I have just heard here in the way of suggestion by the chairman, is to the effect that the court shall determine what is a reasonable rate for the future.

Mr. SHACKLEFORD. Let me ask you a question. If the court should do what you say, would it not take the form of a judgment, and being in the form of a judgment, would the Commission have any right thereafter, under changed conditions, to regulate that rate again until it had proceeded to have that judgment vacated and set aside?

Mr. MANN. Any bill covering that question will of course provide a method for reviewing the rates fixed in that manner, just as any other rate may be reviewed.

Mr. RICHARDSON. May I ask a question?

Mr. SHACKLEFORD. Mr. Hearst has not yet answered Mr. Mann's question.

Mr. RICHARDSON. Excuse me; I did not know he had not answered Mr. Mann's question.

Mr. HEARST. I simply wanted to repeat what I have said, that there is no doubt of the right of Congress to delegate its legislative function to the Commission, and there is no doubt of its right to constitute a court to review the decisions of the Commission, and there is no doubt, first, that it is an entirely legal system of procedure, and that it is also an extremely prompt system of procedure.

Mr. RICHARDSON. Under your bill the Commission have power to raise rates when they find them discriminative?

Mr. HEARST. Yes, sir; they have.

Mr. RICHARDSON. To raise a rate when it is too low?

Mr. HEARST. Yes, sir; the Commission has that power here, if it has fixed a rate that becomes too low.

Mr. RICHARDSON. Suppose that the rate is fixed originally for the purpose of discrimination, does your bill give the Commission the power to raise it if it is too low?

Mr. HEARST. Yes, sir; it gives it the right to fix a rate, and if it has the power to fix a rate, I suppose it would unquestionably have the right to raise a rate.

Mr. RICHARDSON. You know that often occurs in the matter of discrimination; that is what makes discrimination, often, locally.

Mr. HEARST. Yes, sir.

Mr. SHACKLEFORD. It has that right already under the power to regulate.

Mr. HEARST. Yes, sir.

The CHAIRMAN. I would like to pursue this matter further. In calling your attention to the authority given on page 10, line 2, "it shall modify, set aside, or annul the same by appropriate decree or remand the cause to the Interstate Commerce Commission for a new or further hearing," in your judgment, would that authority to remand for further hearing permit the court to determine the lines on which that rehearing would be had? as, for instance, they might say that the rate fixed by the Commission as just and reasonable was, in their judgment, either too high or too low, and they not having the power to fix the rate themselves, they chose to remand it to the Commission with

the instruction to fix a rate lower or higher. Do you think they should have that power?

Mr. HEARST. You mean to positively direct the Commission what rate to fix?

The CHAIRMAN. Well, in their judgment.

Mr. HEARST. Of course their opinion would naturally be that. In giving their opinion they would give their reasons for it, and that opinion would guide the Commission in fixing the subsequent rate. In other words, it would endeavor to fix the rate in accordance with the decision of the court.

The CHAIRMAN. Then that power to remand would substantially give to them the power of determining what the action of the Commission should be—as is usually the case in the case of a court of equity in remanding a case, or in remanding an equity case for further proceeding—of indicating what should be the line of conduct.

Mr. HEARST. Yes, sir; it would certainly tell them what they could not do, and that would enlighten them as to what they could do, and the opinion of the court in details would enlighten them, to a considerable extent, and perhaps altogether as to what they could do; as to what rates would pass the censorship of the court.

The CHAIRMAN. The thing that I want particularly to get your opinion about is as to whether this Congress can require a judicial body to say to the Commission what line of conduct they are to pursue in case the cause is remanded to them.

Mr. HEARST. That is the whole point at issue, the whole point upon which I have expressed the opinion that I do not think they can go to the extent of fixing the rate definitely themselves.

Mr. ADAMSON. If they can not do it, can they help do it?

Mr. HEARST. Yes, sir; because their opinion materially assists the Commission in fixing it.

Mr. ADAMSON. If they can not do it, what right have they to tell another body to do it?

Mr. HEARST. They are not telling another body to do it; they are telling another body what can not get through that court.

Mr. ADAMSON. In other words, to pass on their future action in advance.

Mr. HEARST. That is what every court has the right to do; they have the right to reverse—

Mr. ADAMSON. A lower court?

Mr. HEARST. Yes, sir.

Mr. RICHARDSON. Mr. Adamson, your question goes to the point of whether the Supreme Court of the United States, the court of last resort—

Mr. ADAMSON. I have never heard anybody deny that the upper court could give instructions to the lower court whose judgments are sent to it.

Mr. LAMAR. The courts can challenge the reasonable rate, and declare that the legislative power can not confiscate a railroad's property.

Mr. ADAMSON. This is a distinct court, and it is a court that you say can not fix a rate, and yet you say, though it can not do it, it can tell another body how to do it.

Mr. LAMAR. It can not legislate, but it can declare under its powers—

The CHAIRMAN. That is what I want to know, can we require them to declare?

Mr. LAMAR. I should say not. The Congress of the United States, the legislative body, can not indirectly make the Constitution of the United States different from what it has been fixed. Within their constitutional functions they can adjudicate questions of property or judicial rights. They can find questions of fact within their functions.

Mr. STEVENS. Then it will be necessary for them to adjudicate what is the fact in a particular case.

Mr. LAMAR. They can adjudicate what is a reasonable rate and declare whether it should exist.

Mr. HEARST. I was reading from the first paragraph of my bill. Section 6 enumerates orders that may be issued by the Commission.

Section 6 is as follows:

That when in any investigation made by the Interstate Commerce Commission it shall be made to appear to the satisfaction of the Commission that anything has been done or omitted to be done by any common carrier, respondent or defendant, in such proceeding in violation of the provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or any act amendatory thereof or supplemental thereto, or of the provisions of this act, it shall be the duty of the said Commission forthwith to cause a copy of its report in respect thereto to be delivered to such common carrier, together with an order or orders directing such common carrier, its officers and agents, and any receiver or trustee of its property, to wholly cease and desist from such violation, and to establish, put into effect, and maintain such individual rate, fare, charge, relation of rates, fares, or charges, joint rate, fare or charge, and division thereof, classification of freight articles involved in the proceeding through and continuous carriage over connecting lines or roads, including intersecting switches or connections, and regulations concerning transportation, including the furnishing and apportionment of cars, the provision of other facilities connected with or incidental to transportation, and the receiving, forwarding, and delivery of traffic, as in the judgment of said Commission may be necessary to prevent the continuance in any degree of such violation. That whenever any common carrier, subject to the provisions of this act, shall fail or refuse after reasonable notice to furnish cars to shippers for the transportation of freight as interstate commerce, or to forward and deliver such freight at destination within a reasonable time, such failure or refusal shall be deemed to constitute unjust discrimination and undue and unreasonable prejudice and disadvantage, and in any case or proceeding pending before the Commission or any circuit or district court of the United States based upon such failure or refusal on the part of any such common carrier, proof that, in the furnishing of cars or forwarding or delivery of its traffic, other shippers have been preferred shall not be required.

The CHAIRMAN. You have passed over section 2?

Mr. HEARST. Yes, sir; because I was proceeding primarily with the powers given to the Interstate Commerce Commission, then passing to the character of the orders that they may issue, and then coming to section 7, which tells how the above-described orders shall become effective. Section 8 deals with "The Court of Interstate Commerce."

The CHAIRMAN. I would like to ask you if it was intended by the language of section 2 to bring ocean carrying within the purview of the interstate commerce act?

Mr. HEARST. The language there is, "and also to such transportation over any part water and part rail route used for through shipment or through carriage." Yes, sir; I should think that covers coast transportation—

The CHAIRMAN. By water.

Mr. HEARST. This is designed to bring under the action of the Commission the independent water lines that are engaged in forwarding interstate commerce, and which are not under the provisions of the

present act, I believe, unless they are owned by one of the railroads which is engaged in interstate commerce. It is practically what Mr. Spencer, I think, said was desirable, a day or two ago.

The CHAIRMAN. Do not the provisions of that section require the foreign vessel engaged in interstate commerce to file a schedule of tariffs, and would the joint tariffs between a railway and such a vessel have to be filed?

Mr. HEARST. I had not considered that particular relation of it. I had considered it particularly in regard to lesser water lines.

The CHAIRMAN. Yes; the lakes and rivers?

Mr. HEARST. Yes, sir. Section 3 reads:

SEC. 3. That when the rate fixed by the Commission is a joint rate and the carrier parties thereto fail to agree upon the apportionment thereof among themselves within twenty days after notice of such order, the Commission may issue a supplemental order fixing the portion of such joint rate to be received by each carrier party thereto.

That seems to be necessary in order to carry out the first order of the Commission.

Mr. SHACKLEFORD. Does that not apply simply where the rate is part rail and part water; is not that the limit to which that is intended to go?

Mr. HEARST. That is the limit that I considered.

Mr. RICHARDSON. Does not your language there, "through shipment," indicate that very thing—that it does apply to this country?

Mr. HEARST. This country, necessarily.

Mr. RICHARDSON. You do not intend it to apply to any water route except to a route that is a continuous one—part water and part rail?

Mr. HEARST. That is my view.

Mr. MANN. Would that apply to the shipment of wheat or corn from New York to Liverpool?

Mr. SHACKLEFORD. That is foreign commerce and not interstate commerce. Would that not be foreign commerce?

Mr. HEARST. If the Interstate Commerce Commission were given power to regulate that, it might, but it has not the power.

Mr. MANN. The Supreme Court has decided that the present law does not cover such a case as that.

Mr. HEARST. I should think—

Mr. MANN. It has always seemed to me that it might properly cover a case of that kind, and I have wondered whether your bill provided that it should or not.

Mr. HEARST. Section 4 reads:

SEC. 4. That it shall not be lawful for any common carrier subject to any of said acts, or any company or person acting for or in the stead of such common carrier, to advance, reduce, or cancel any individual or joint rate, fare, or charge now or hereafter in force over the route or line of such common carrier unless or until notice thereof, plainly showing the change intended to be made in such rate, fare, or charge, and the date when the same shall take effect, shall have been filed with the Interstate Commerce Commission and posted in all depots or stations where passengers or freight are received for transportation under such rate, fare, or charge, for at least thirty days prior to the date when such change is to become effective.

That is simply a modification of existing laws which require that if a rate is to be raised ten days' notice shall be given and filed, and if a rate is to be lowered three days' notice shall be given. That increases the time to 30 days in the interest of the shipper, believing that the

third provision gives opportunity for discriminating rates. Section 4 continues:

Provided, however, That said Commission may, for good cause shown, upon special application, allow a particular rate, fare, or charge to be changed upon shorter notice published and filed as aforesaid. No joint rate, fare, or charge shall become effective until all carriers named as parties thereto shall have concurred therein by signing the rate schedule or filing general authorization or specific notice of concurrence with the Commission.

I think that this is generally in effect now, at least by agreement; but I have made it a part of this bill in order that no railroad shall post a rate and lead a shipper to ship his goods over connecting roads, only to find out that the rate is not concurred in by the other roads.

Mr. MANN. Is there anything in your bill, in that connection, that will prevent putting into operation what they call "midnight rates?"

Mr. HEARST. What is a midnight rate? I am not familiar with that.

Mr. MANN. Then I will not go any further on that. That is one method of evading rates.

Mr. RICHARDSON. Known to Chicago? [Laughter.]

Mr. SHACKLEFORD. Is that practiced to any extent in the West?

Mr. MANN. It is practiced wherever they have a cutthroat road, and it is practiced very extensively in various parts of the country, I believe, so they say.

Mr. HEARST (continuing reading):

and any common carrier enforcing any schedule or joint rates, fares, or charges which shall not have been concurred in by all carriers parties thereto, or any schedule of rates, fares, or charges which shall not have been published and filed as required by this section, shall be subject to a forfeiture of one hundred dollars for each day such unlawful tariff shall be published or enforced. The said Commission may prescribe the form, contents, and arrangement of all schedules of rates, fares, and charges, and it shall be the duty of said Commission to make orders from time to time, as may be practicable, with a view of securing uniformity in freight classification and the use of rate schedules containing concise and easily understood provisions and regulations.

These provisions are all merely designed to simplify and make the schedules intelligible, because I understand they are now only to be interpreted by an expert, and to secure business simplicity and system as far as may be for the convenience of shippers, and in the classification of rates. Shall I call attention to some of these other points?

The CHAIRMAN. Certainly. That is what we desire you to do.

Mr. HEARST. I see that it is getting pretty late, Mr. Chairman.

The CHAIRMAN. You will not be able to get through to-day?

Mr. HEARST. I am afraid not.

The CHAIRMAN. We will have to adjourn at 12 o'clock, and if you will suspend now and resume to-morrow morning at half-past 10, we will be glad.

Mr. HEARST. Very well.

(Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, Tuesday, January 17, 1905, at 10.30 o'clock a. m.)

TUESDAY January 17, 1905.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. G. WALDO SMITH.

Mr. SMITH. I would like to present the views expressed in a report to the New York Board of Trade and Transportation.

The CHAIRMAN. How long would this take you?

Mr. SMITH. I think it will take only about five or eight minutes.

The CHAIRMAN. Proceed.

Mr. Smith read the report referred to, as follows:

EVILS OF INTERSTATE COMMERCE—QUARLES-COOPER BILL DEFECTIVE—A JOINT CONGRESSIONAL COMMISSION ON INTERSTATE COMMERCE FAVORED.

ROOMS OF THE NEW YORK BOARD OF TRADE AND TRANSPORTATION,
New York, December 28, 1904.

To the New York Board of Trade and Transportation.

GENTLEMEN: Your committee on railway transportation on the 27th of January last submitted to you a report giving reasons why you should oppose the Quarles-Cooper bill amending the interstate-commerce law. That report you adopted unanimously. We now have the honor to submit a further report in support of your action.

The more we have studied the evils and abuses of interstate commerce, the firmer are we of the opinion that the Quarles-Cooper bill will not in any desirable way add to the effectiveness of the existing lawful remedy.

The delay, incident to the enforcement of existing law, was one of its chief weaknesses, but that condition has been in a large degree remedied since the passage of the Elkins law February 19, 1903.

That the Quarles-Cooper bill would make no improvement in expediting the trial of complaints is evidenced by the criticism of its provisions made by Hon. John D. Kernan in his address before the interstate-commerce law convention held in St. Louis last October. Mr. Kernan was urging the importance of an amendment to the bill which was designed to hasten the taking of additional testimony if required by the courts, and his conception of what the experience would be under the Quarles-Cooper bill without his amendment is indicated by his remark, as follows: Mr. Kernan said:

"After a shipper, whose complaint is filed in his youth, dies of old age the disposition of his case is of no use to his business."

The amendment proposed by Mr. Kernan was suggested to Mr. E. P. Bacon in these rooms last year and he, after consultation with his counsel, rejected it as being unconstitutional, and the bill in this respect remains hopelessly defective.

The greatest evils now complained of are those growing out of the private car line, private terminal-track and side-track systems. It is not claimed by its supporters, and can not be demonstrated, that the Quarles-Cooper bill will in the slightest degree affect these abuses.

The private car companies deny that they are under the provisions of the interstate-commerce law, and the Interstate Commerce Commission has not determined their status, neither have the courts adjudged them to be subject to such law.

The language of the Elkins law is as follows:

"And it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced."

This would seem to warrant a belief that it is sufficient to reach such devices. If it is not so, it should be made so. These private car-line, private terminal-track and side-track systems are devices by which, among other things accomplished, the grossest discriminations are made and rebates given. The method of evading the law, if effective to that end, is very simple. The shipper pays his freight to the railroad company. The charge so paid is the lawful tariff rate plus the regular charge for the

use of the private car. The railroad company in turn settles with the private car company. Finally, the private car company pays to the shipper the rebate previously guaranteed to him. The shipper, having been assured of his rebate in advance of the transportation, has been able to calculate in his own transactions the ultimate return to himself of the amount agreed upon. By this device his goods have been transported at a less rate than those of his competitor, and he has enjoyed an advantage over him to that extent.

But these are evils which, if not reached by the broad, comprehensive, far-reaching provisions of the Elkins law, as supplementary to the interstate-commerce act, could not be reached by the Quarles-Cooper bill. All other known forms of discrimination and preference between shippers are now forbidden by the Elkins law, and summary methods of proceeding by the courts are provided with penalties seemingly adequate, if enforced, to deter such practices.

Mr. E. P. Bacon, of Milwaukee, the distinguished and able leader of the advocates of the Quarles-Cooper bill, wrote this board October 5, 1903, as follows:

"The Elkins bill, which was enacted at the last session, seems to provide the most effectual means possible of preventing such discrimination (between shippers), either in the granting of preferential rates or the paying of rebates or by any other device. The legislation on this point seems to be as complete as it is possible to make it."

The consideration of the Quarles-Cooper bill has thus far been mainly confined to a discussion of the rate-making powers provided. This is a very important feature of the measure. Intelligent men honestly differ as to the propriety of giving such power to the Commission. The advocates of the bill deny that it gives that power except in cases determined by the Commission upon complaint, but that it empowers the Commission to require the substitution in future shipments of a rate declared to be reasonable for one declared to be unreasonable.

This provision, it is declared, would require the substitution "for the future" of the rate named by the Commission, but it must be observed that this interpretation of its meaning is the purest assumption, as the words "for the future" do not appear in the bill. These words, "for the future," were in all the original bills and in the draft of the Quarles-Cooper bill, but before its introduction in the present Congress they were stricken out by Mr. Bacon and his counsel, lest their presence would cause the courts to adjudge the bill unconstitutional. Thus the bill is intended by its advocates to accomplish by obscure language the doing of something which, if plainly declared, they themselves believed unconstitutional. It is not probable that the eye of the Supreme Court of the United States would fail to penetrate this disguise.

But this provision is open to a radically different construction, which, if held, will utterly confound those who, trusting to their leaders, look for relief from its passage.

As stated above, it is intended that the rate substituted by the Commission for the rate complained against shall apply to future shipments. Serious doubt can well be raised that this construction would be sustained. A complaint is made against the validity of a specific charge or rate made upon a specific shipment. The case is tried and determined, as Mr. Bacon said, after the complainant "has died of old age." The difference between the shipper and railroad on that shipment is adjusted, but there is nothing in the bill which provides that the railroad shall not charge the same rate upon the next shipment, and the framers of this bill dare not make the language so as to explicitly provide that the corrected rate shall apply "for the future."

The existing Elkins law, on the other hand, does not run amuck with any such doubtful construction of its terms.

But it is said it gives the Commission no power to correct the rates or to declare a lawful rate. The Elkins Act is specific in forbidding any unlawful rate and clearly elucidates what rates are unlawful. It with equal directness declares the "tariffs published and filed by such carrier" to be lawful. The Commission after investigation could do no more. The carriers are held rigidly to their tariff rates it matters not much what those tariffs are if all shippers are charged and required to pay alike, and excessive tariff rates are no longer to be accounted with to the same extent as formerly. Hon. Martin A. Knapp, chairman of the Commission, at a public hearing before the Senate Committee on Interstate Commerce, March 18, 1898, made the following declaration:

"The question of excessive rates, that is to say, railroad charges, which in and of themselves are extortionate, is pretty nearly an obsolete question."

Furthermore, the penalties under the Elkins law are heavier. In this respect it provides that—

"Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be guilty of a misde-

meanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars."

The corresponding provisions of the Quarles-Cooper bill are as follows:

"The offending party shall be subject to a penalty of five thousand dollars for each day of the continuance of such violation which, together with costs of suit, shall be recoverable by said Commission by action of debt in any circuit court of the United States, and when so recovered shall be for the use of the United States."

This provision of a per diem penalty was manifestly written to fit the bill when it contained the words "for the future," and is doubtless retained in the belief that the bill would apply to future shipments. The maximum penalty therefore is \$5,000 per day under the Quarles-Cooper bill, whereas under the Elkins law each and every specific violation of the act is an offense punishable by a fine of \$20,000, whether there is one offense per day or one hundred offenses per day, each paying a penalty.

And again, the Quarles-Cooper bill provides that the penalty "shall be recoverable by said Commission by action of debt," requiring such special litigation subject to delays and doubts of ever reaching a conclusion or that the penalty would ever be actually imposed.

On the other hand the Elkins law provides that offending persons upon conviction of the offense "shall be deemed guilty of a misdemeanor and shall be punished by a fine," etc.

It seems to us that the advocates of the measure made a fatal confession of the serious doubt they entertained of its constitutionality when they struck from it the words "for the future."

This raises the question as to whether the Federal judiciary would in any event pass upon a rate for the future prescribed by an administrative board, and this does not appear to be involved in any doubt. This is indicated as follows:

1. In deciding the Maximum Rate Case (167 U. S., 479), the Supreme Court of the United States said:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act."

2. At a hearing before the Senate Committee on Interstate Commerce on March 10, 1898 (p. 9 of the hearings), Hon. Martin A. Knapp, chairman of the Interstate Commerce Commission, said:

"One doctrine is now settled—that whereas the investigation of the question whether an existing rate is a reasonable and lawful one or not is a judicial question, the determination of what that rate shall be in the future is a legislative or administrative question with which the courts can have nothing to do."

3. At a hearing before the Senate Committee on Interstate Commerce on February 21, 1900, at page 118 of the hearings, Hon. Charles A. Prouty, Interstate Commerce Commissioner, said:

"The prescribing of a rate is, under the decisions of the Supreme Court, a legislative, not a judicial function, and for that reason the courts could not, even if Congress so elected, be invested with that authority."

And yet the advocates of the Quarles-Cooper bill propose that Congress shall elect to require the Federal judiciary to pass upon a rate for the future prescribed by the Commission.

Thus far we have omitted to refer to the provisions of the second section of the Quarles-Cooper bill which invests the Commission with the power "to prescribe the just relation of rates to or from common points." This feature, we think, requires some attention, as it is perhaps the most important provision in the bill as relating to the interests of the city of New York.

To illustrate what the effect of this provision would be, we state that, if this second section is enacted, it will give the Interstate Commerce Commission the power to fix rates and to determine absolutely what differentials shall exist as between New York, Philadelphia, Baltimore, and Boston from Chicago or any other common point; also what just relation of rates shall be enforced as between Chicago and New York to common points in the South.

This means that an autocratic administrative board would be endowed with the arbitrary power of artificially apportioning the trade of the country between such places as it should determine. We do not think that such a body as the Interstate Commerce Commission should be permitted to assume the power arbitrarily to so apportion the trade of the country to nullify natural and acquired advantages in one locality and confer the favors of trade and commerce upon other localities by their dictum. This is precisely what they have done in at least one case and what they attempted to do in another against New York. In the decision of the Interstate Commerce Commission, filed April 30, 1898, in the case of the New York Produce

Exchange v. The Baltimore and Ohio Railroad and other lines, being a determination in the question of differentials existing against New York (*Interstate Commerce Reports*, Vol. VII, pp. 669 and 670), the Commission among other things said:

"In 1882 about 65 per cent of all the exports from the United States exported through the Atlantic and Gulf ports passed through the port of New York. The same year 80 per cent of all the imports into the United States by way of these same ports came in at the port of New York. It will be seen, therefore, that during that year, being the year when the advisory commission pronounced upon the reasonableness of these differentials, New York practically engrossed the foreign trade of this country. A preliminary question is, How far is the port of New York entitled, or how far can that port expect to continue, to enjoy that commercial supremacy?

"Plainly not to the same extent. It would be in accordance neither with the theory of our institutions nor with the history of the development of our nation to permit any one port upon our vast extent of seacoast to monopolize the trade with foreign nations."

Then the Commission stated the various sums of money Congress had appropriated for the improvement of the several Atlantic and Gulf ports, and they concluded the paragraph with the following declaration:

"Rather does this recognize it as the policy of our Government that its foreign commerce should be distributed between various ports."

Actuated by this revolutionary sentiment, the Commission dismissed the complaint of New York and sustained the differentials. It is not necessary here to enlarge upon the injury that by these differentials has been done to our city. They have been the subject of repeated investigation and report by this and other organizations in this city and by official commissions.

In like manner the Commission in the *Maximum Rate* case assumed to adjust "the relation of rates" then existing between Chicago and the South and New York and the South. The complaint in this latter case was made by the Chicago and Cincinnati freight bureaus that rates to the South from those points were not "in just relation" to rates from New York to the same southern points. The Commission in this case, acting upon the principle enunciated by them and quoted above, ruled against New York and ordered an adjustment of rates which would give Chicago jobbers a better chance to take from New York her southern trade. This being the most important case in which the Commission attempted to exercise this power, it was appealed to the United States Supreme Court, and the action of the Commission was made void and the power of the Commission denied. Thereupon, the Quarles-Cooper bill was drafted. The geographical area from whence this bill gets its chief support is clearly defined.

But here again comes in the United States Constitution, exhibiting the wisdom of the fathers and rescuing us, as it assuredly will, from this great wrong. Section 9 of Article I provides:

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another."

There are still other features of the interstate commerce question, a consideration of which would further reveal the inadequacy of the Quarles-Cooper bill. Among these the question of making and changing the classification has the highest rank in importance. It is of but little practical consequence to the railroads who fix the tariff rate if they retain the power to change the classification at pleasure. It matters little if prohibition of discriminating rates be enforced as between localities if classifications in those localities be not uniform. If the classification upon a manufactured product from western points to New York be sixth class and the eastern classification makes the same article third class going from New York, we are hopelessly discriminated against, and the Quarles-Cooper bill would give no relief.

It is needless to enlarge upon this feature. Almost every branch of business in New York has suffered grievous injury from this form of discrimination through the making of the classification. The Quarles-Cooper bill affords no relief for this evil.

It was the consideration of these and other important shortcomings and manifest weaknesses of the Quarles-Cooper bill that determined your committee to oppose its passage.

Not only does it fail to do many things that should be done, and does nothing in our judgment desirable that is not already provided for by the existing law, but it in so many ways seems to run counter to constitutional provisions that it would almost certainly become void after the first litigation under it had reached the Supreme Court of the United States. Therefore we have preferred to wait for a better bill, and the policy of this committee and of this board has been to oppose this measure as not only a useless, but, in some respects, a pernicious one, hoping that the grow-

ing sentiment throughout the country and in Congress, and a more perfect and thorough study of all the questions involved shall develop a measure whose provisions and scope will be just, ample, and broad enough to meet the needs of the whole country and repair in every respect, as far as practicable, the faults and weaknesses found to exist in the present laws.

Holding these views, we welcome most cordially the recent courageous and patriotic utterances of President Roosevelt and the renewed and intelligent discussion of the question he has thus precipitated. We are confident that this country is now on the right track, and that the near future will bring about the enactment of wise and sound laws. To this end we observe that the President, after mature deliberation, has invoked the aid of the distinguished Judge Grosscup, of Illinois, and enlisted his services to draft a new bill to meet the demands of the situation.

We further note that the Hon. Paul Morton, Secretary of the Navy, a man of broad views and possessing a personal and expert knowledge of railroad problems, gained by a lifetime's association with and practical knowledge of the transportation department of railroad management, has, at the President's request, undertaken to assist in bringing about proper legislation.

Attorney-General Moody and former Attorney-General Knox, now a United States Senator, are also in the counsels of the President with special reference to this matter.

The appropriate committees of the United States Senate and of the House of Representatives have also taken up the subject with renewed activity.

In addition to this a proposition has been made, and meets with much favor, to appoint a joint special commission on interstate commerce to thoroughly investigate all problems involved, to take testimony during the long recess after the adjournment of the present Congress, and to report their conclusions and recommendations by bill at the opening of the next Congress, as was done in the last session of Congress with the merchant marine question.

With all these elaborate plans in preparation under the guidance of President Roosevelt, we believe that it would be very unwise and a serious error to take action at this time in behalf of the Quarles-Cooper bill, the enactment of which by this Congress would, beyond doubt, be used as an excuse for indefinite delay of the more comprehensive legislation which we may believe will come out of the pending discussion. Never in the history of this country has this cause had, to the same extent, the advantage it now derives from the attention and study of the President and the wise men associated with him. If, therefore, the Quarles-Cooper bill should be enacted with all its faults and weaknesses, and clothed in doubt, as it is, of the constitutionality of some of its provisions, and by its enactment the present aroused sentiment of the country should be so quieted that these efforts should cease, we believe it would be most unfortunate and delay the final solution of the problem for many years.

We also point to these conferences and preparations as suggesting a broader interpretation of the President's utterances than has been given to them by the friends of the Quarles-Cooper bill. We have interpreted the President's language to mean substantially that the existing laws must be enforced with reference to discriminations and rebates and other forms of preference in interstate commerce, and that if existing law is found inadequate to remedy these evils, additional legislation must be enacted. We indorse most heartily this sentiment.

In conclusion, we recommend that no action be taken at this time except that your committee be directed to promote as far as it can the necessary action by Congress to secure the appointment of a special commission on interstate commerce or such other plan as will bring about action in substantial harmony with the views expressed in this report.

Respectfully submitted.

W. H. PARSONS, *Chairman*.
IRVING R. FISHER,
J. FREDK. ACKERMAN,
CHARLES A. MOORE,
DICK S. RAMSAY,
W. S. ARMSTRONG,
THOMAS P. COOK,

Committee on Railway Transportation.

OSCAR S. STRAUS, *President*.

FRANK S. GARDNER, *Secretary*.

A true copy.

Attest:
[SEAL]

Mr. SMITH. Now, will the committee permit me to say just a few words of my own in this matter, if they have time?

The CHAIRMAN. We have not the time.

Mr. SMITH. Then I will merely submit a paper handed me this morning by Mr. Thurber, who received it from the Museum of Philadelphia, prepared by them, which gives the rates of freight of the principal countries of the world that have railroad transportation, and I would like to submit that with this.

The CHAIRMAN. Very well.

Mr. DAVEY. May I file a resolution of the board of directors of the Receivers and Shippers' Association of Cincinnati?

The CHAIRMAN. Yes, sir.

The paper referred to is as follows:

Resolution unanimously adopted by the board of directors of the Receivers and Shippers' Association of Cincinnati on December 22, 1904.

Whereas the item of transportation vitally affects every line of business; and

Whereas the factor of competition among the carriers is now in process of elimination under the community-of-interests idea; and

Whereas reasonable, equitable, and stable freight rates are absolutely essential for the fullest development of legitimate business enterprises of the country; and

Whereas the common carriers and the people are so interdependent upon each other as to make their interests in the transportation problem mutual; and

Whereas by virtue of this mutuality of interests, it is essential that the question of regulation of common carriers by the National Government should be dealt with in a broad and intelligent manner and in a spirit of absolute justness and fairness to all interests: Therefore be it

Resolved by this association, That in view of the public character of the business of common carriers, it is but fair to the people and also to the carriers themselves that the national Government should reasonably and conservatively regulate the transportation charges of common carriers so as to avoid discrimination between individuals, localities, and communities. And that this association favors a minimum amount of national legislation, which will not unfairly prevent the legitimate development of railroads as servants of the people, yet of sufficient potency to amply protect the shipping public from unjust and unreasonable rates, rules, and regulations, and to secure absolute justness and fairness as between the shipping public and the carriers; and be it further

Resolved, That this association strongly commends the recommendations made by President Roosevelt in his message in dealing with the great transportation problem; and be it further

Resolved, That this association favors the passage of the Quarles-Cooper bill, now pending in Congress, with an amendment to section 8 of the act to regulate commerce, as amended, that shall provide that in the event of rebates or discriminations of any kind whatever by the transportation companies the minimum measure of damages shall be the difference between the special rates and the tariff rates charged the shippers seeking redress; and be it further

Resolved, That a copy of these resolutions be sent to the President and to members of Congress.

Mr. TOWNSEND. Is this organization, represented by Mr. Smith, the same one that Mr. Thurber represented when he appeared before us?

Mr. MANN. Not at all.

Mr. TOWNSEND. Is this organization represented by Mr. Thurber?

Mr. SMITH. Not at all. His organization is the export organization; ours is the New York Board of Trade and Transportation, which has existed for a great many years, and, we believe, has done a great deal of good.

Mr. LAMAR. Mr. Chairman, I would like to present Mr. Burr, of Florida, a member of the railroad commission of that State, who will define his position before the committee.

The CHAIRMAN. You are recognized for ten minutes, Mr. Burr.

STATEMENT OF MR. R. HUDSON BURR.

Mr. Chairman, the committee that comes here to-day was appointed by the president of the National Association of Railway Commissioners, comprising 30 States that have commissions in this country, pursuant to the following resolution passed at their last annual convention:

Whereas provisions of existing laws do not adequately authorize and empower the Interstate Commerce Commission to properly correct and prevent unjust discriminations against persons and places, and enforce fair and reasonable interstate railway rates and charges: Therefore be it

Resolved by the National Association of Railway Commissioners in convention assembled at Birmingham, Ala, this 16th day of November, 1904, That in accordance with previous recommendations the Congress of the United States be, and is hereby, requested to so amend the existing law as to authorize the Interstate Commerce Commission, on complaint that any interstate rate is unreasonable or unjust, and after full hearing, to ascertain what rate is reasonable and just in the particular case and order the carrier to observe that rate for the future, subject to rehearing upon application of the carrier when the conditions may have changed, the rate so prescribed to be effective unless enjoined by the court; and be it further

Resolved, That the president of this convention appoint a committee of nine to go before the proper committees of Congress and urge the passage of this needed legislation, and that each Senator and Representative in Congress be furnished by the secretary with a copy of these resolutions.

We do not propose to burden this committee to-day with statistics, because we believe that you have already been furnished with sufficient in that direction. But I feel safe in saying that there is no set of men dealing with this question in the United States who are more familiar with the demands for such legislation, that come in contact with it daily in the several States, and that realize more fully the public necessity and public demand for legislation on this question. Fully 75 per cent of the commerce of the United States is interested, and while it runs in some States to 90 and 95 per cent, we believe, after investigating this question, that it will average 75 per cent in the United States. This amount of our commerce, as you know, goes entirely without regulation, and the rates are made by the railroads themselves. Many of these rates are fair; a great many of them are unreasonable. There is one particular measure that I want to call your attention to, that in whatever measure is settled upon we would like to have secured, and that is a provision that will correct the abuses of the long and short haul. Unless we get that, much may be left undone.

Mr. TOWNSEND. Would not the power to fix rates regulate that?

Mr. BURR. I am not certain that it would. Some commissions to-day have the power to make rates, and yet they can not always correct the abuses of the long and short haul. For instance, in my State, on trains moving from the West—from western points without the State; take, for instance, the through rate from points in Oregon to the base point in Florida—I will say Jacksonville, as that is our principal base point—and to intermediate points the rate is the through rate to Jacksonville plus the local rate from Jacksonville back to that point, although they do not perform the service. As an illustration, on a certain class of freight moving from a western point to Tallahassee, which is 165 miles farther west, or nearer the point of origin, the rate to Jacksonville is \$1. The local rate is 75 cents, and that 75 cents is added to the through rate to determine the rate to Tallahassee, although Tallahassee is 165

miles near the market. Now, we claim that that is a discrimination against all the stations between Tallahassee and the base point.

For instance, a station 25 miles west of Jacksonville, the same principle would apply there; the through rate, plus the local rate, would be the rate there. But the local rate would be a much less local than the one Tallahassee would pay.

Mr. LOVERING. That is on the same line of road?

Mr. BURR. Yes. That applies in several directions in the rate, but I used that as illustrating the whole, so that the freights to all these intermediate points are not on the same footing. A point nearer the base point, where the railroad actually hauls the freight farther, gets a less rate than Tallahassee.

The CHAIRMAN. Is there a statute now existing that would remedy that?

Mr. BURR. It was supposed to be remedied in the act to regulate commerce, but it has been held that it will not hold.

The CHAIRMAN. Why will it not hold?

Mr. BURR. I can not explain that particular feature of it, and will leave that to another member who will address you.

The CHAIRMAN. It is because that provision of the statute has been suspended in its operation by the Interstate Commerce Commission, has it not, in the particular case you speak of?

Mr. BURR. The Interstate Commerce Commission has decided, I believe, that they can not regulate that matter.

Mr. MANN. Did they not regulate it in the Social Circle case, and was not that case sustained by the Supreme Court of the United States?

Mr. BURR. I am not prepared to say, sir. But this condition that I speak of they have assured me that they can not correct.

The CHAIRMAN. What is the reason that they can not correct it? Is it because of the inadequacy of the law, or some other reason?

Mr. BURR. That is my understanding, sir; that is my understanding, and we feel that whatever legislation Congress passes, that particular feature of it ought to be remedied.

The CHAIRMAN. What suggestion have you to make as to change of the phraseology of the present law?

Mr. BURR. We have not undertaken to say to you, gentlemen, what particular law you shall pass, nor do we advocate the passage of any particular pending bill. We simply take the broad position that we need legislation on this question.

Mr. MANN. Might I ask you whether you believe that the law ought absolutely to forbid in all cases a greater charge for the shorter distance than for a longer distance?

Mr. BURR. No, sir. There are conditions where water competition at the base points would necessarily make the long haul a very much lower rate, and we do not pretend to say that in all cases the rate should be made strictly on mileage basis in that particular; but we do believe that the through rate, or very little addition to the through rate, would be the fair rate to intermediate points.

The CHAIRMAN. Let me call your attention to this section 4 of the interstate-commerce act:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same

be in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

The difficulty that you complain of is because the road in that particular case has been exempted from the operation of that act. Is not that the fact?

Mr. BURR. I do not think it is. I do not think they have ever attempted to regulate it at all.

The CHAIRMAN. You do not think they have?

Mr. BURR. Now, Mr. Chairman, one of my colleagues has just mentioned to me that the Supreme Court has not upheld the action of the Interstate Commerce Commission in the Social Circle case.

Mr. MANN. The Supreme Court did uphold the Interstate Commerce Commission in the Social Circle case in that particular.

Mr. BURR. I will leave that point to Mr. McChord, who will follow me.

The CHAIRMAN. All right, sir.

Mr. BURR. I simply want to reiterate that we get complaints in the various States from shippers and receivers of freight calling attention to the freight charges, the abuses that they suffer, and in nine-tenths of these cases we have to try to explain to these people that this is a condition that we can not meet, because it is interstate commerce. Then, when that explanation is made to them, we invariably hear from them again making demand that we do all we can to get Congress to empower the Interstate Commerce Commission sufficiently to regulate these matters. And, while you do not have a unanimous demand upon you for this legislation to-day, I believe that fully nine-tenths of the people in the country want it and are in a position now to go to demanding it.

I will leave the further discussion to the other members who will follow me.

STATEMENT OF CHARLES F. STAPLES.

Mr. Chairman and gentlemen of the committee, appreciating the importance of time, and realizing that you desire all preliminaries waived, I last night endeavored to jot down memoranda of my thoughts upon this question, which will be a guide to me and will be the foundation for my remarks. I have not them in full, but with your permission I wish to read the matter.

Mr. BURKE. Please state who you are and where you are from.

Mr. STAPLES. I am a member of what we term the railroad and warehouse commission of the State of Minnesota, and have been for years; and in order to protect and shield myself I want to say to you gentlemen of the committee that I am not an attorney, and therefore can not be expected to answer all the legal and technical questions which you might propound.

Mr. MANN. That will be some relief.

Mr. STAPLES. Yes. I will try, however, to treat the question from

a practical standpoint, and wish to say that while these views may be personal, to an extent, they are representative of the consensus of opinion of the commissioners of the several States of the Union which meet every year to consider this, with other kindred questions.

We find to-day that the unification of railway interests has progressed to such an extent, through actual consolidation, control of stock in previously competing lines, the evolution of stockholding interests, more often called unity of interest, that the open competition between carriers which has previously operated to keep down rates, and certainly prevented wholesale increases in rates, has been very largely suppressed. These conditions being no longer factors, we can not rely on them for the control of the rate question. It is impossible to compel competition by legislation. Very naturally, competition springs from self-interest, and results only from the independent activities of those engaged in trade and commerce. It follows, therefore, that without effective competition in railway rates, and with no effective law for public control, the public is really defenseless, and must submit to conditions often manifestly unfair. We believe most conservative and thoughtful men will agree that the railway companies could not live and prosper under the old method of open, active competition, which only results in a demoralized condition of the rate question.

I want to say here that I am one of those who believe firmly—and the public generally do not coincide with that view—that actual, open competition in the way of making rates among railroad companies is an absolute impossibility. We could not live under that system to-day, in my judgment.

Mr. MANN. Because it would reduce rates too low?

Mr. STAPLES. It would result in what I term a demoralized condition. The companies, we will all agree, are entitled to a fair earning upon their legitimate investments, and we all want them to have it.

Mr. MANN. Active competition, in your judgment, would reduce railroad rates so low that the railroads could not afford it?

Mr. STAPLES. It would have that tendency at times, and in certain localities; there is no doubt of it. If that was the real motive, that of securing their share of the traffic, they would have to resort to that which I have described. As I say, I appreciate that the public generally clamor for open competition among railroad companies, with the object in view of reducing rates. What we want is such legislation as will authorize some public body to act as arbitrators between transportation companies and their patrons, thereby securing them against excessive or unfair charges or discriminating practices in the movement of commerce between States and the giving of shippers and localities an equal system of rates, which shall be fair to the shippers and remunerative to the railroad companies.

The chief complaint now is that the transportation companies are the sole arbiters as to what is reasonable treatment. The inadequacy of making rate regulations dependent upon rates as applied in the past, without reference to rates to prevail in the future, is surely apparent to all. The real parties to suffer are left without remedy.

And here I want to say, Mr. Chairman and gentlemen, that in my opinion it is just as necessary in the matter of public control that there should be some tribunal who may act as intermediaries between the patrons and the roads, and shall have just the same power, and

there is just the same necessity for raising a rate as there is for lowering rates, or prescribing what is a fair and reasonable rate. There are many times, in my judgment, when rates should be raised; and I have, as commissioner of our State, participated with our board in directing certain railroads to raise certain rates when rates should be raised. There were times when it seemed to be the only means of affording fair relationship between different localities.

Mr. BURKE. Has the authority of your commission to raise a rate ever been determined in your State? Has that question ever been determined as to whether you had that power?

Mr. STAPLES. No, sir; I do not wish to say that it has.

Mr. WANGER. Has the action been acquiesced in by the railroad companies and patrons?

Mr. STAPLES. Yes, sir. And I want to say at this juncture that in the State of Minnesota the powers of the commission are very broad, perhaps as broad as the powers of the commission in any State in the Union, and I think it is fair to say that the relation between the railroads and the commission has been rather harmonious on the whole.

Under the ruling of the court the Government is gradually losing control, and the tendency has been for the management of the companies to centralize. Weak companies have been obliged to go out of business, or have been absorbed by the larger ones or the stronger ones. So that at the present time no one disputes that the great share of the mileage is controlled by very few men. These men naturally represent the interests of the stockholders. Can we look for them at the same time to be philanthropists? If rates and conditions in different localities are reasonable, surely the railroad man should not fear investigation by any impartial tribunal. I do not believe that any tribunal vested with the power to arbitrate between the carrier and the shipper, and appreciating all the responsibility placed upon them, after hearing all the testimony on both sides, would do otherwise than render a fair decision. Surely such a body, composed of intelligent men, is as competent to pass upon a question as are railway officials. That position may of course be disputed, but it is based upon my contact with railway officials.

Rate making at best is an arbitrary matter. I never yet heard any traffic man say anything else. The chief effort is all the time to approximate what share of the whole burden of transportation shall a particular traffic stand, one of the most difficult problems possible, and, as I say, finally the decision is an arbitrary one, and necessarily so, for there is no scientific method of determining what share it should stand nor the actual cost of transportation of any particular commodity. I think the record will show that in most cases the complaints are of discrimination or unfair relation of rates rather than of rates being too high. And surely it will be conceded that such questions should be submitted to some intermediate body to pass upon, and not leave the shippers or locality solely to the mercy of interested parties.

Take, for instance, Chicago and St. Paul, or as was stated here this morning, New York and Philadelphia, competing for common markets in the West; one of those places has the rate prescribed at one point which gives it a slight advantage over the other. Should that question be left solely to the railway companies, or should there be some intermediate body to step in and say that that is an unfair relation?

I do not claim there that the question is involved as to whether a rate is too high or not. It is the relationship that I am speaking of; the foundation for the complaint. It being so manifest to all that public sentiment is so strongly crystalized in favor of such legislation as would restore to the Interstate Commerce Commission the powers supposed to have been conferred by the law of 1887, it seems only fair to ask you, gentlemen of the committee, to recommend such a law, and have it enacted, and let time tell whether this will solve this great question.

The CHAIRMAN. Would it interrupt you if I were to ask you a question?

Mr. STAPLES. I would be pleased to answer, if I can, Mr. Chairman.

The CHAIRMAN. Speaking on that subject of differentials between localities, imagine the condition that existed a few years ago, when the Pennsylvania road had its line to the west from Philadelphia, and the Baltimore and Ohio had its line to the west from Baltimore, and neither had a line between Baltimore and Philadelphia. Suppose that the Baltimore and Ohio Railroad gives to its terminal, Baltimore, an advantage of 2 or 3 or 4 cents; do you think that that would be a proper subject for governmental interference, or for the Commission to act upon? Would not the people of Baltimore have the right to whatever benefit a road coming to their place, and not going to its rival, would give them?

Mr. STAPLES. I will give you my honest opinion about it.

The CHAIRMAN. I want to get your idea about it.

Mr. STAPLES. Yes, sir. I do think, without going into details, that there should be an intermediary tribunal for the purpose of passing upon that question; a tribunal which is disinterested and has the interests of the whole public at heart.

The CHAIRMAN. You think those two rates should be the same?

Mr. STAPLES. Do not understand me to say that. There may be reasons why there should be a difference. But I do not believe that the question should be solely settled by those different companies.

The CHAIRMAN. Then, you think that it would be proper for the Government to provide means by which the rate to Baltimore should be raised, and they lose the advantage that comes to them from this situation that I have described?

Mr. STAPLES. I do. However, upon that question I wish to say that while there might be a case parallel to the one you cite, under the conditions to-day, such cases are rare.

The CHAIRMAN. I was speaking of the conditions that existed.

Mr. STAPLES. I understand that.

Mr. MANN. The condition does exist to-day, in Iowa points, in shipping grain that goes to Liverpool as to whether it shall go to Galveston or to the South, or whether it shall go to New York coming east—That is a practical condition to-day, is it not?

Mr. STAPLES. Yes, sir; that is true. I agree with you there.

Mr. MANN. Do you think that it is wise to confer upon a commission the power to set aside all rivalry in trade and by an arbitrary order determine that the grain shipments to Galveston shall cease, on the one hand, possibly, or that the grain shipments to New York shall cease, on the other hand, possibly?

Mr. STAPLES. Yes, sir. And as a qualification I wish to say that I

do not believe that a commission would so find under any circumstances. They might, however, find that there should be a certain change in the conditions.

Mr. MANN. Do you believe that it is within the power of finite wisdom, in an order, in a specific case, and upon a hearing, to absolutely determine between these two points, Galveston and New York, say, so as to reach absolute equality that must remain, instead of leaving it to a question of rivalry?

Mr. STAPLES. There can be no such conclusion on the question; under our constitution—getting a little way into law, as I understand it now—that is absolutely precluded, as I understand. There can be no decision by any commission which is final or which is not subject to review by a court.

Mr. MANN. I mean assuming that the courts would review it and come to the same opinion. Assuming all that.

Mr. STAPLES. I reiterate my opinion; restate it—that these different common carriers being public servants you can not present to me a feature or a question which would change my opinion that there should be some supervisory power.

Mr. ADAMSON. Do you not think that a better plan would be that where the railroads are willing to compete they should be allowed liberty to do so, and where they desire to throttle competition and combine on rates that then the intermediate power should take a hand and set that right?

Mr. STAPLES. The railroad companies in certain conditions desire to compete, as you put it, but the cases are rare where, for any length of time, they dare do it. They can not do it and live. If they do it, they will kill each other off.

Mr. ADAMSON. That would be because they cut one another's throats?

Mr. STAPLES. Yes, sir. Now, speaking of the Elkins law which has been enacted, I think it was wise legislation. I have not any doubt in my mind that it was enacted as much, and perhaps more, to benefit the railway companies of the country than the people of the country. Yet I think there is a common benefit, and I think that was very desirable and necessary legislation. I am not able to prove anything, and am making no charges, but it is claimed that that law is evaded to-day in certain localities and by certain railroad companies. I do not make any charges, but it is so stated by persons who claim that they can prove it.

But it is a benefit to the country by preventing this demoralization of the railway situation, and certainly must have added very greatly to the revenues of the railroads of the country, as it has obviated the necessity of refunding to certain favored shippers those charges which properly belong to the carrier, which demoralization would simply result in discriminations between certain individuals or favored localities on the lines. I think this law has in a great measure done away with that, and has been a good thing.

Mr. MANN. You are a practical man, and your views are of great value to us, and you will pardon me if I ask you another question.

Mr. STAPLES. You appreciate that I wish to take up as little time as you wish me to take up.

Mr. MANN. I understand. It is claimed, now, by both Chicago and

New York, that the grain rates from Iowa points through Chicago and New York to Liverpool are too high as compared with the rates from Iowa points to New Orleans or Galveston on the way to Liverpool. Do you think it is wise to permit the Interstate Commerce Commission, after hearing, to raise the grain rates from Iowa points to Galveston and New Orleans, and prevent the railroads now leading south from getting what they consider is their share of that grain trade, and helping those southern ports at the same time?

MR. STAPLES. I think this, that there is more than the question of grain rates involved in that question. Those roads running south are operated to serve the public. It may work no injustice to the producer of grain in our Western and Northwestern States if that rate shall be raised, thereby enabling them to get a share of that traffic and to have that to help support them in rendering the other necessary service to the communities served by them. As I say, I can only reiterate my opinion. I do not wish to stand here as an advocate of the principle, generally speaking, of the raising of railroad rates.

MR. MANN. We understand that.

MR. STAPLES. Not at all; and I believe that power should be conferred upon the Commission. I say "the Commission." I mean any tribunal.

MR. MANN. I understand. You base your answer upon the proposition that the raising of the grain rates to the South might possibly reduce rates on something else, because it would add to the income?

MR. STAPLES. No, sir; not at all. That answer was based on the principle that they ought to have a share of that traffic if they are in a position to carry it.

MR. MANN. I base my question upon the proposition that the Interstate Commerce Commission might, within its power, raise the grain rates South so that the roads South would lose that business. I do not think any of the grain ought to go South. It is a longer way round; and the Interstate Commerce Commission might entertain that same view. But the question is whether they ought to have the power to put it into effect.

MR. STAPLES. We have in our State to-day a law the wording of which is slightly different from the wording of section 4 of the interstate-commerce act. Our law is effective on the question of the long and short haul. Under that law it is left arbitrarily subject to the review of the courts, with our permission, to determine when that clause may be abrogated by the company. They universally apply to the commission for permission to waive that at certain common points. Now, it rests with us to say whether the question of competition which enters and whether the volume of business they would get at that point are such that in our opinion they should be permitted to lower the rates at that common point on their line because of the fact that their line may be one-third longer than the other line. That answers that question.

MR. ADAMSON. Do you think it would be right, without the consent and contrary to the judgment of a carrier, to raise a rate that carrier thought was fair and profitable and which it was willing to operate?

MR. STAPLES. I do not think it is fair to take it from that standpoint. You can not determine whether the carrier thinks it is fair and profitable or not. They may have another motive.

Mr. ADAMSON. That is not the case I state.

Mr. STAPLES. Yes; they may have another motive.

Mr. ADAMSON. That is not the case that I state. The case I state is that of a rate which a carrier thinks is fair and finds profitable and which it is willing to operate under. Is it right to raise that rate against the judgment and consent of that carrier?

Mr. STAPLES. There may be conditions existing why, in my opinion, it would be fair.

Mr. ADAMSON. You think that if a carrier finds that it is downhill to New Orleans, and that it can haul twice as much, and can get better loading back, and that other conditions combined will enable it to haul cheaper to New Orleans from the grain fields of the West than from those grain fields to New York, it would be right for the Commission to annul natural conditions and rob that carrier of its market, rob that road and that city of its business, to give it to somebody else, do you?

Mr. STAPLES. I think there might be conditions where that would be a wise policy. I do not think it often occurs.

Mr. ADAMSON. It would be entirely for the benefit of another fellow that it would be wise, though, would it not?

Mr. STAPLES. No, sir; not in my judgment, not at all.

The CHAIRMAN. A little while ago, in answer to Mr. Mann, when you were discussing the contention between Chicago and Gulf ports, you said, as I understood you, that those people, the Chicago people, would have a right to some part of that traffic?

Mr. STAPLES. I spoke of common western points, between Chicago and St. Louis.

The CHAIRMAN. I thought the contention came from Chicago.

Mr. STAPLES. No, sir.

The CHAIRMAN. As a matter of fact, it does.

Mr. STAPLES. It was a misunderstanding.

The CHAIRMAN. It was a controversy between Chicago and those Gulf ports?

Mr. STAPLES. I had no reference to that in the connection you speak of now.

The CHAIRMAN. I did not understand you, then.

Mr. STAPLES. Proceeding, Mr. Chairman, we are not here to advocate any particular measure; but I wish to call attention to the so-called Quarles-Cooper bill, as it is generally claimed that this measure simply restores the same powers to the Interstate Commerce Commission which it was supposed to have under the former law. This, I think, is an erroneous idea. There seems to be but one question prominent in this discussion, and that is the question of granting power to make rates to an intermediate body. From my view, and so far as I have been able to read from the public press, that seems to be the prime contention here, and I wish to emphasize that, in my opinion, while that is a very necessary power to confer, I do not believe that it is the crying evil to-day; that is, that the chief complaint comes from the source of the rate, particularly.

It comes more from the inequalities of unfair conditions existing between different localities. And in that connection I wish to say that I have in mind somewhat the question of common markets, and also the question of the long and short haul clause or feature of it, as to which our courts have held, as I understand, as in one of the meas-

ures referred to here this morning, that that question of determining when competitive conditions are such that the long and short haul clause should be abrogated rests with the judgment of the carrier and not with the judgment of the Interstate Commerce Commission. The law is worded just slightly different from the law of my State, which has been tested and found to be good.

In that connection I want, at this juncture, to give an instance, and I want you gentlemen to consider—not to give your opinion to me but to consider—this instance. Taking the different stations—which I can name here—I have on my desk now, which of course we can not treat because it is interstate commerce, an instance where the railway company takes grain from intermediate points between the Twin Cities and Chicago for the shipper who offers it. The shipper pays the local freight into the Twin Cities; he pays the other freight back to Chicago and makes a half cent a bushel on the transaction. In other words, he saves a half a cent over what he would have to pay if they picked up a car on the road to Chicago. It seems to me that I can not find a clearer case of what to my mind is an unjust relation of rates. I simply ask the question, and ask you gentlemen to consider, whether such a situation as that should not be treated by some intermediary body. I do not say that they should have final authority, but the opinion should come in there as to whether those rates are fair.

Mr. MANN. That rate you named is made in the interests of Minneapolis flour, I suppose?

Mr. STAPLES. I am not here to make any but general statements. I simply cite that as an incident.

Mr. MANN. I understand.

Mr. STAPLES. And I could cite many of them, but I do not think it would be right to take up the time of this committee. I could cite other instances; for instance, where companies bringing cement and lime and other necessary commodities in—for instance, for the building of sidewalks—charge the through rate to St. Paul and the local rate back. Now, there may be reasons why that could be justified. There no doubt are, to my mind. But ordinarily I think that is exacting an unfair rate from the intermediate points.

The CHAIRMAN. Will you state, Mr. Staples, why that would not be a case that could be corrected under the long and short haul clause of the interstate commerce act?

Mr. STAPLES. For the very reasons that I have stated to you, Mr. Chairman. Understand, I make no pretenses to being a lawyer, but I have read those decisions, and it is made clear to my mind that the courts have held that the competitive conditions between the distributing and terminal points may be such that that is necessary.

But the point that I criticise or complain of is that the courts only hold that that is left to the opinion of the carriers. They are to be the judges. If you will read the decisions I am confident you will find that that is the finding of that court.

The CHAIRMAN. Then the remedy would be to strike out from section 4 this line: "Under substantially similar circumstances and conditons." Would you strike that out?

Mr. STAPLES. Mr. Chairman, I beg to be relieved from giving specific answers as to the wording or the substitution of words which would cover what I call the defect.

The CHAIRMAN. But, Mr. Staples, you are a man of large experience in this matter, and you are a public officer who has to deal with questions very similar to this, the only difference, perhaps, being that your subjects are State commerce and this question that I speak of applies to interstate commerce. The principle ought to be the same in each, and you must be familiar with that principle. Now, can you not aid us with your experience upon a question of this kind, as to whether that is the language that destroys the benefit of section 4?

Mr. STAPLES. Mr. Chairman, I can do this. I do not wish to presume, but I will say that I could and would cheerfully transmit to you a copy of our law, the wording of which has been upheld by the courts. I could not quote it to-day exactly, and I would not care to place myself in that position. I realize that a most grave question is at issue, and I would not attempt it. A man sometimes gets a word wrong, even in a prayer that he says every day. With all due respect, Mr. Chairman, I could not attempt to give you specific language. But certainly the point at issue I make clear, and I am certain if the committee will review the findings of the court they will agree with me. And to emphasize that, I want to say this: That the very cases, some of which I have spoken of here to-day, I have taken up with the Interstate Commerce Commission, and they have convinced me that they are absolutely powerless, excepting to make a recommendation, which the railway companies may observe and may not, just as they see fit. They are without the power to enforce their recommendations.

Mr. MANN. Perhaps I can aid you, and I am sure you can aid us, by two or three questions in sequence.

First, do you think that in no case should the railroad company be permitted to charge more for a shorter haul than for a longer haul?

Mr. STAPLES. I do not hold that at all.

Mr. MANN. Do you believe, then, that they ought not to be permitted in any case to do that unless they have consent, after application to some board or commission like the Interstate Commerce Commission?

Mr. STAPLES. Yes, sir; which of course carries with it what goes without saying, that it may be reviewed by the courts.

Mr. MANN. I assume that.

Mr. STAPLES. Yes, sir.

Mr. MANN. Now, do you think from your experience that there would be physical and mental capacity on the part of any one commission to settle all of those questions that would arise, together with the rate questions and other questions involved, under the present act to regulate commerce? Would there be time enough, I mean?

Mr. STAPLES. Well, that is a most difficult question to answer, and in answering it I want to say this, that as soon as the decisions of the Commission have been found to be reasonable they are obeyed.

I speak from experience in my own State. In 90 to 95 per cent of the cases where they take it up intelligently and hear the evidence on both sides their findings are brief, they are to the point, and they are observed by the carriers. I think I can say in more than 95 per cent of the cases. In a large share of the cases in our commission the experience has been that they do not even have to go through the formality of a hearing. If in conference with a representative of the company who is in touch with the commission they show a disposition to be fair, the point is often conceded without a hearing at all. It is

utterly impossible to say, for that reason, how much time might be consumed in these hearings. I can appreciate that the draft on the time of the commission in the first four or five years would be enormous, because the complaints might overwhelm the commission. But that would not alarm me; I do not think it is an alarming feature.

It may be necessary. I am not indorsing it, but I am in a position to say that our legislature is considering a measure this winter having for its object the authorizing of our commission to take up with the Interstate Commerce Commission these very questions, where complaints of the nature of the different ones which have been spoken of this morning might have to be treated, giving the commission authority to take up such cases with the Interstate Commerce Commission, with the idea that they are in a position to take them up intelligently, and providing that the State should bear the expense, and with the idea that less time would be consumed, of course, to the end that this commission would be largely relieved by being somewhat advised of the facts, and it would necessarily take much less of their time.

I simply speak of that to bring out the fact that in my opinion the time is coming when the Interstate Commerce Commission, through its agents or through some system of reorganization, will act in some such way as that, assuming that this power of public control will be conferred in the end—that there will be a relation between State commissions, or that there may be district commissioners, or some other system may be established whereby the central power would be relieved of a share of the detail work. That is a general idea on which I have thought more or less; but I can not answer your question specifically. I have expended a good many words in endeavoring to answer it, as you see.

Mr. MANN. You have said a great deal that is of value to us. Now, another question.

You have spoken of deciding these questions without a hearing. Do you think that the Interstate Commerce Commission ought to have authority to relieve the carrier from the long and short haul clause without a hearing?

Mr. STAPLES. I think you must have misunderstood those words before, used in connection with the statement that it was by conference with the railway companies, and a harmonious agreement.

Mr. MANN. I mean without a hearing of the parties?

Mr. STAPLES. No, sir; I do not entertain that idea for one moment—that the railway companies, particularly, should be denied every opportunity to present every phase of the case from their standpoint.

I want to say in that connection that I emphasize this statement—that there can be no question that the Interstate Commerce Commission, if that is to be the tribunal, after having experience and being composed of the men that it should be composed of, is far better able to pass upon these questions than any court in the land.

Some one has asked, Why not let the court make these rates? The court is a very intelligent body, but it has to deal with thousands of questions and issues, and has no particular training along this line, and with all due respect to the court, they are not competent, in my opinion, excepting to review the question and determine whether some illegal act has been performed by the Commission, or some act which in itself is unreasonable or which would result in an unreasonable finding.

Mr. MANN. Could you give us any idea of the number of findings of the Commission in your State relieving the railroads from the long and short haul clause?

Mr. STAPLES. Yes; very quickly. There has never been one?

Mr. MANN. There is no place in your State where a carrier is permitted in local traffic within the State to charge more for a short haul than a long haul?

Mr. STAPLES. Not one. And I want to say in that connection that there have been many applications.

Mr. LAMAR. I would like to ask the witness a question.

The CHAIRMAN. Certainly.

Mr. LAMAR. The proposition to invest some administrative or ministerial body, or whatever it might be termed, with the legislative power to review rates and fix a rate, upon hearing, to be reasonable, which up to that time had been challenged, is looked upon, of course—and it is not disguised by those who have railway interests—with great alarm, and, I think, from their standpoint with very sincere alarm. They look upon the further proposition of the original rate-making power as being something almost satanic.

Now, the question I would like to ask you is this: If this administrative or ministerial body is given the right to review a particular rate and fix upon a rate to be reasonable, which up to that time had operated unjustly and unreasonably, in their opinion, can not every rate in the United States be challenged? I mean now logically, without reference to whether they do it or not?

Mr. STAPLES. I understand.

Mr. LAMAR. Can not every rate in operation be challenged by complaint, either by filing a complaint against that particular rate or—

Mr. STAPLES. I would have to answer that question in the affirmative.

Mr. LAMAR. That is what I have always thought. I have thought that it was a distinction without a difference.

Mr. STAPLES. I am only giving you my opinion. My judgment is, yes, to that.

Mr. LAMAR. I never have seen any use in arguing the proposition. It is either somebody humbugging himself or, more unfortunately, humbugging somebody else when a distinction is attempted to be drawn between the giving of a power to challenge the rate and fix it in a particular case and challenging every rate in the United States. Continuing it logically, they would have the same power in the one case as in the other. Now, whether they would do it or not is another question. I have no idea that they would. I tell you frankly that if I were to vote for a bill that gave this administrative body a right to challenge a particular rate and fix it upon hearing, I would just as lief go the length and give it the entire power, because logically I think it is the same. Now, whether or not the Commission vested with power to fix rates would any more think of disturbing the business of the country and go to the extent of interfering with existing railroad rates in any such manner as that is another question. I do not think they really would.

Mr. STAPLES. Nor do I.

Mr. LAMAR. And I think there will be enough to convince the public in the challenging of rates, so that whether they have the original rate-making power or not, the result will be about the same.

Mr. STAPLES. No; I could not agree with you on that.

Mr. LAMAR. No? Still, logically——

Mr. STAPLES. The probabilities and the possibilities are two very different things. Now, I am answering that from my knowledge of the question in issue.

I want to add that in the State of Minnesota, under the powers of the Commission, on their initiative they are authorized to challenge a rate—any rate or all rates—without petition. Of course there is no such purpose, or at least it has not been advocated here, except on petition; and it is not the Commission in this instance who challenge the rates; it is the petitioners. And judging from the result in my State, where the petitioners may challenge a rate, experience has shown me—and I have learned that the same idea prevails in most of the States—the shippers are very slow to make their grievances public. They hesitate a long time to do it. I am not here to set out the reasons why; but these reasons are what has prompted the legislature of the State of Minnesota to confer upon the Commission the power to initiate, by resolution, the question of the reasonableness of any rate. That is what prompted our legislature in our State to do that. Now, the Commission in our State, in exercising that power, are very discreet, if I may say so, and very careful and conservative, and the complaints by shippers or localities challenging rates are relatively few.

Mr. RICHARDSON. I understood you to say a few minutes ago that it would be safer and better to leave the Interstate Commerce Commission, with their experience, with power to regulate and fix a rate than it would be to confer that power upon a court composed of judges?

Mr. STAPLES. I answered that emphatically, and I said that was with all due respect to the court.

Mr. RICHARDSON. I understand that. Your opinion, then, is on this line, that while a man may be very able in law he may not be very practical in regulating railroad lines?

Mr. STAPLES. Exactly so.

Mr. RICHARDSON. And you would rather take the Interstate Commerce Commission, with the experience that they have now, and their qualifications, than to trust to a court of three or nine men, of lawyers, judges, men qualified in the law?

Mr. STAPLES. Yes, assuming, of course, that they are not especially appointed to do this work.

Mr. RICHARDSON. You assume that they know their business, and have studied and they may be learned in the law, but they are not as competent in these practical lines and in the matter of fixing rates as the Interstate Commerce Commission, who have had a great deal of experience in that way?

Mr. STAPLES. Yes, sir; and my experience has been, where we have had cases in the courts in our State, that the courts steer clear of all the questions except the legal ones.

Mr. RICHARDSON. We have had much talk about experts. Is it not the fact that generally there is no testimony more uncertain and in which there is more difference of opinion among the witnesses than expert testimony?

Mr. STAPLES. I will answer that question, and then I want to add a statement.

Mr. RICHARDSON. All right.

Mr. STAPLES. In any case where there was an issue which had to be tried by the court——

Mr. RICHARDSON. Yes.

Mr. STAPLES (continuing). I would rather rely on common sense and honest people than on experts.

Mr. RICHARDSON. You would rather rely on good men, practical men, in the practical affairs of life, to arrive at what is a practical conclusion in the practical affairs of life, than on a court? You would rather take an honest jury of men than five judges learned in the law?

Mr. STAPLES. Yes, sir; that is where the jury system excels.

I fail to find where power is conferred to require two or more companies to make and maintain joint rates, which is very necessary if full relief is to be granted.

Some claim the remedy for a party claiming a rate is unreasonably high lies in a suit for recovery of damages. This may be good theory, but mighty poor practice. In the event he can afford the cost of litigation he is liable to die before the courts have finally passed upon the question; but more likely if the rate complained of is an unreasonable one as compared with the rate given some competitor at another point, he is sure to be driven out of business before the case is determined. If the rate is an unreasonably high one and he continues to do business under it, he is not the real sufferer and should not recover. The real loss falls upon the producer who has been required to sell his product based on the high rate.

The shipper, usually the middleman, is not so much interested in the rate itself as he is in a fair rate from a competitive standpoint.

The cases are comparatively few where more than one rate is involved, or at most the rates on one commodity. In the event this rate is reduced by an order of the Commission and the order put in effect during a review by the courts, if the order is not sustained it seems reasonable the railway company can better stand the temporary loss in its revenue on this one product than the shipper can in case the order is sustained, pending which time he had been paying the higher rate.

We can not treat the transportation companies as private enterprises. They exercise the rights of eminent domain, and are organized under public franchises for the sole and only purpose of performing a public service for hire. Our courts have repeatedly held them to be subject to public control.

Can any one imagine the railway companies consenting to a law providing that the farmer shall have the final say as to what price is to be paid for his land needed for the right of way? This is simply changing the shoe over to the other foot.

No one to-day questions the necessity and wisdom of public control of public turnpikes, ferries, telephone, telegraph, and express companies, street-car companies, and even grain elevators, stock-yard companies, public carriages, etc. We do not stop at how they shall conduct their business, but arbitrarily prescribe their rates and charges. Is it not as much necessary to regulate and control under reasonable safeguards the business of these powerful but very necessary public servants as are railway companies?

In closing, gentlemen, permit me to say there is no feeling antagonistic to railways in the Northwest, and certainly no sentiment favoring national legislation which will in any degree act to cripple the legitimate growth and development of their properties; but there is a

well-grounded and strong demand for immediate legislation which shall grant reasonable Government control over interstate commerce.

The CHAIRMAN. We will give you an opportunity to continue your statement to-morrow morning, Mr. Staples.

Mr. STAPLES. I thank you very much.

Thereupon, at 12 o'clock m., the committee adjourned until to-morrow, Wednesday, January 18, 1905, at 10 o'clock a. m.

WEDNESDAY, *January 18, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Mr. Staples, we are ready to hear you further.

STATEMENT OF MR. CHARLES F. STAPLES—Continued.

Mr. STAPLES. Mr. Chairman and gentlemen, I will ask for just one minute, and not more. I regret very much that I could not finish my remarks yesterday. I have taken occasion to file an addition to them with your reporter.

I wish now just to emphasize three points which have been brought out in these remarks. In the Quarles-Cooper bill are the words "when a case has been referred to the courts and an appeal taken, a court may deny or modify the order." This is the point that I wish to make, Mr. Chairman. Under the decisions of our Supreme Court, when treating the question of rates, the courts can not modify the order of the Commission. They must affirm or deny, and that upon the ground whether the rate authorized by the Commission is a confiscatory rate or not. I am not here to cite those decisions of the court, which this committee can look up and consult.

I notice that a great deal of time has been spent upon that in the different bills that have been presented.

Another thing is, that I think any bill which is enacted should contain the provision that the findings of the Interstate Commerce Commission should be made *prima facie*, thereby making the railway company the defendant, rather than the Commission. That is a provision contained in the statute of Minnesota, and has been upheld by the courts and has been found to be very effective.

Another provision, Mr. Chairman, which seems to me to have been omitted or not taken care of in the so-called Quarles-Cooper bill, is one authorizing the Commission to insist upon the companies providing a through joint rate and maintaining the same. Without that authority they are not powerless, but a large share of the good which is hoped for from some legislation of this character will be denied.

Now, Mr. Chairman, I do not wish to elaborate upon those points, and will give the balance of the time to my associates.

Mr. BURKE. I would like to ask Mr. Staples one question, if I may be permitted.

The CHAIRMAN. Certainly; proceed.

Mr. BURKE. The newspapers report this morning that a member of the Minnesota legislature declined to vote for the reelection of Senator Clapp to the Senate because he had not declared himself in favor of the Quarles-Cooper bill, or that he had not declared himself soon enough. I would like to ask you if you are in favor of the Quarles-Cooper bill.

Mr. STAPLES. I am very sorry to be put in that attitude. However, my situation upon this necessary legislation must have been made clear to this committee. The Quarles-Cooper bill, in my opinion, will accomplish very little of what the public are clamoring for to-day; that is, in the way of strengthening the hands and powers of the Interstate Commerce Commission.

Mr. RICHARDSON. Mr. Chairman, one word. From indications, it seems to me that the hearings are going to close pretty soon, and I think there ought to be a fair division of time made. Now, we had one side pretty thoroughly represented here, and I do not think that the large number of railroad gentlemen who are interested in this matter have had an equally fair chance here. We are going to close pretty soon, and should we not have a fair understanding?

The CHAIRMAN. The situation is somewhat peculiar, because Mr. Bacon announced early that the proponents of the Cooper bill did not want any time.

Mr. RICHARDSON. I do not mean to reflect on the other side at all. I simply made the suggestion that we could reach some fair division of the time. I believe these hearings are going to close pretty soon.

The CHAIRMAN. We will have to limit you gentlemen this morning strictly to the time you said you wanted.

Mr. BURR. I believe I understood yesterday that the other members of our committee would consume twenty minutes.

The CHAIRMAN. Twenty minutes between them?

Mr. BURR. Yes, sir.

STATEMENT OF MR. C. C. M'CHORD.

Mr. M'CHORD. Mr. Chairman and gentlemen: I, of course, do not know how wide a range this testimony has taken, but I apprehend that in the discussion of such a proposition as this there are three questions that should be determined. The first is the power of Congress to delegate the authority that it proposes to give the Interstate Commerce Commission.

The CHAIRMAN. I do not think there is any question about that. There is no member who is disturbed about that.

Mr. M'CHORD. Yes, sir; I thought not. The next question is as to the necessity for such an amendment. The third question is as to the possibility of it. I mention the first proposition because in Kentucky we have in the last few years had a full discussion of the proposition, and an effort has been made there to pass a law giving the State railroad commission of that State the power to pass rates. That question was raised with a great deal of emphasis and seriousness, and it has gone to the extreme there that it is almost contended that the Constitution itself was unconstitutional. So far as I am concerned, I believe, and I believe that the people of this country—the masses and the shippers—believe in this legislation; that they are in favor of giving the Interstate Commerce Commission additional powers which it does not now possess. And in making that claim we do not desire to be understood as taking the position that all railroad rates and all tariffs made by the railroad corporations of this country are unjust or unreasonable. I believe, as a rule, in the main they are adjusted upon a fair and equitable basis. But it is the exception to the rule that we

want this Congress to cure by the amendment to the interstate commerce law.

Now, the question was propounded yesterday regarding the long and short haul section of the act. It is well known that in the Social Circle case there were two propositions, one as to whether the rate to Social Circle from Cincinnati—the differential on shipments from Cincinnati to Social Circle—of 50 cents was just and right; whether the circumstances and conditions that there prevailed justified that particular rate to Social Circle as against the rate of \$1.07 to Atlanta and Augusta. It is a question of fact that the Commission heard and determined, and it was not justified under the act. That question went to the Supreme Court of the United States, and that court held that the finding of the Commission was proper. The Commission in the same proceeding undertook to fix the maximum rate to Atlanta. The Supreme Court held in the same case that it was not within the power of the Commission to fix a maximum rate.

The Interstate Commerce Commission under that decision assumed that it had power to decide whether the circumstances and conditions surrounding the transportation of commodities to and from the various territories in the country were solely for their consideration, and in the case which followed, the Belma case, I believe, and then afterwards in the case of the Tennessee, Virginia and Georgia Railroad Company against the Commission, it was held that the law, the act itself, fixed the proposition that if there were dissimilar circumstances and conditions even as to competition between rail and rail, that that was a question which the carrier itself should consider, and which the law considered, and it was said that it was such a dissimilarity of circumstances and conditions as would justify the higher rate. Therefore, that being the state of the law, we do not think that any such discretion should be given to the carrier, nor do we think that that should be the law.

In Kentucky we had the same provision engrafted into our constitution as to the long and short haul. The railroad commission of Kentucky there refused to exonerate the railroad company from the provisions of that section on the shipment of coal from eastern Kentucky to the city of Louisville. We did that, not because we did not believe that there should be a less rate to Louisville where that coal came in competition with coal that was floated down the river on barges for something like 25 or 30 cents a ton, but we contended that the rate to the intermediate points was too high and should be reduced. The Kentucky court of appeals held that that was a matter purely in the discretion of the railroad commission and that the court could not interfere with that determination on the part of the railroad commission. That case came to the Supreme Court of the United States and was upheld, and it will be found in United States Statutes, volume 33, page 503, I believe.

The impression seems to prevail that tariffs and rates, so far as interstate commerce is concerned, are in a chaotic condition; that it is a mere jumble of rates and a jumble of tariffs. Why, it is well known that there are certain bases or schemes adopted by the railroad corporations of the country for making rates. As an illustration, you take the rates from the eastern seaboard cities. It is based upon a rate primarily from New York to Chicago. And a differential is allowed to Philadelphia, Baltimore, and Boston, I believe. In arriving at a rate north, east, or west of Chicago it is made plus the New York-

Chicago rate. I have a few illustrations of that; and, by the way, I have a map here that shows the entire adjustment of rates so far as that section of the country is concerned.

Take, for instance, the section in which the official classification applies, roughly described as lying east of the Mississippi River and north of the Ohio and the Potomac rivers. The whole territory is divided into territories each of which takes a portion of the Chicago rate. East St. Louis takes 116 per cent of the Chicago rate, the Chicago rate being regarded as 100 per cent. Indianapolis takes 107 per cent of the Chicago rate, Cincinnati 87 per cent, and Louisville takes the same rate as Chicago. That is, territory penetrated takes less percentages of the Chicago rate than those territories which are off from the Chicago line. I could enumerate others. Now, I do not believe that the question is as great a problem as many think.

The CHAIRMAN. May I interrupt you there?

Mr. McCHORD. Certainly.

The CHAIRMAN. What has produced the establishment of this Chicago rate and the resultant rates?

Mr. McCHORD. Investigation and the judgment of traffic men.

The CHAIRMAN. Has it been long continued?

Mr. McCHORD. Very long.

The CHAIRMAN. Ought it to be disturbed?

Mr. McCHORD. I do not know. I would not say, because I would be unworthy of the confidence of this committee, and unworthy to pass upon any interstate rates, if I should pass upon a question of that sort without the most thorough and searching investigation; and that is what I apprehend the Interstate Commerce Commission would give it if the question came before them.

As I said in the outset, this is not a proposition to upset the traffic and freight rates of this country, because as a rule, I believe, the basis for making rates is right and proper. It is the exception to the rule that wants to be cured here, and it can only be cured in one way, and that is by giving the power to the Interstate Commerce Commission. After complaint has been made, to hear and determine and fix a rate.

Now, so far as I am concerned, I have not had the time to examine the various bills that have been proposed here. I am frank to say that I am wedded to this proposition, because it was my own measure, a measure that I introduced in Kentucky, that has been upheld by the Supreme Court of the United States. There the power is given to the railroad commission, upon complaint, or upon its own motion, when it is charged or believed by the commission that a rate is or rates are extortionate, to give notice to the carrier, to hear all the evidence and arguments that may be produced, and from that and from its own investigation to determine whether that rate is just and reasonable; and if they find that the rate is not just and reasonable, then it fixes a rate that must be just and reasonable, by which the carrier is bound. There we stopped, knowing as we did that from the creation of highways, from the first building of railroads, every court in the land has been open and is open to-day to the shipper and the railroad in a properly instituted action to try the question as to whether the rate fixed is just and reasonable.

Mr. RICHARDSON. Does your rate go into effect at once?

Mr. McCHORD. After ten days' notice.

Mr. RICHARDSON. Ten days' notice?

Mr. McCHORD. To the carrier.

Mr. RICHARDSON. Then there is the right of appeal?

Mr. McCHORD. There is no appeal at all. I can not conceive how there can be an appeal from the legislative act to the court. There is, of course, the right of review everywhere in a properly instituted action, but the idea of appeal has been confused here with the idea of review. The courts have the right to review, but you can not appeal from the legislature or from the act of a legislative tribunal to the court. This is not against the railroads. It is in the interest of the railroads, and to protect them from a greater evil. I believe that these questions should be discussed and considered fairly.

I regret to see that some traffic men, some railroad men, and some shippers have so far forgotten the great question that is pending here as to inject personalities into it. I have seen it even charged in the press, or have seen the question asked, whether or not the power was sought by certain people for the purpose of selling out. I do not believe that it is fair, gentlemen, to deal with a great question in that way. If that question can be properly asked of the Interstate Commerce Commission, it can be asked of that great man who sits in the White House to-day, and, while I differ with him politically, I believe that the measures that he has proposed will immortalize him. I believe that when he carries them through he will have made the greatest President that this country has ever had.

My time is limited, gentlemen, and I yield to Judge Crump, of Virginia.

STATEMENT OF HON. BEVERLY T. CRUMP.

Mr. Chairman, I shall detain this committee but for a moment, as I appreciate the fact that the time is limited, and other gentlemen desire to be heard. There are, as I understand, various bills now pending before this committee, and I notice that two additional bills were introduced in the House on the day before yesterday, which I presume were likewise referred to this committee. It would seem vain on the part of anyone to attempt to discuss this general position, considering the great public importance of the proposed measures before this committee, with any degree of intelligence or efficiency, with merely a few moments in which to do it. Several hours would scarcely suffice for that. I only desire to emphasize this one point, that there seems to be a great desire and wish, not to say demand, on the part of those interested in rates in this country, that there should be action. We have in the first place the recommendation in the message of the President. We have resolutions of commercial bodies all over the country.

The committee of which I am a member appears before this committee of Congress for the purpose of representing an additional interest, and I desire to restate that fact, which has been stated by our chairman, that this National Association of Railway Commissioners represents the commissions of 30 States. At their last annual convention they adopted unanimously a resolution to the effect that the Interstate Commerce Commission should be given additional power—that is, the power to substitute one rate for a rate that they condemn. The general question is whether or not Congress should enact such legislation. Why should it not? I can not undertake to discuss that question at all from a general legal aspect. But permit me to call your

attention to one phase of it. If I understand aright the principles upon which this Government was founded, the Congress is not undertaking to manage private property, but in all this character of legislation it is resuming governmental functions which have been by its consent for some years intrusted to private parties. That unquestionably follows from the decisions of the Supreme Court of the United States from Chief Justice Marshall down.

As a general matter we find these railroad gentlemen, and among them in my section of the country are some close friends of mine, who are splendid men, patriotic men, men earnest in their endeavors to do the best they can for the commercial interests of the country, too, but in the end I say that those gentlemen, as a general proposition, in making rates are exercising a governmental function. The properties they hold are held in a public trust, under a public use. This may be a theory, but is a practice, nevertheless, that is recognized in our Government. And why should not the Government, through its own tribunals, exercise this governmental function? If a meeting of traffic men fixes a rate, they are doing what Congress has a right to do, and has, on occasions, the duty to do.

The question before this committee to decide is, without going into the merits of this proposition, whether under the present circumstances it is its duty to resume the exercise of this governmental function and to create a tribunal by extending the powers of the Interstate Commerce Commission, which shall stand between the railroad rates and the shippers. I do not think that we ought to confess in this country that a set of gentlemen acting in their private interests, however high minded they may be, however recognized they may be as men actuated by the highest motives, are such a set of men that we are unable to create a governmental tribunal to take their place which can be intrusted with the discharge of governmental functions, and for that reason we prefer to leave that to those who, as private persons, exercise those governmental functions. And on behalf of this association we ask that this legislation be enacted.

In regard to my own State, the State of Virginia, I would like to state one fact. The Old Dominion has come into line a little late. Our commission is of a recent origin, and quite unique. I doubt whether there is such a body as that body is almost in the world. It was created by the Virginia constitutional convention which promulgated a new constitution about two years ago. That convention was composed of the best men in Virginia. It was unquestionably the best body of men that have collected together in the State of Virginia, certainly since the war. There was scarcely a man in it who had been to the legislature: there was scarcely a man in it who had held or would accept a public office of any kind. [Laughter.] I was not a member of it, I would say.

Mr. MANN. You had been a member of the legislature?

Mr. CRUMP. I had been a member of the legislature for one session a number of years ago, and that cured my taste for public office, and I felt that I would never be willing to hold a public office again. I only want a professional office. I have been a lawyer all my life.

Such a body as that constitutional convention certainly expressed the desire of Virginia as to the regulation of railroad rates—of course in that case only intrastate rates—and they created a commission to prescribe rates, originally, and with the power to correct rates on com-

plaint, and with the power to put rates into effect and then to sit as a court, and if the rates were not observed or any regulation promulgated by them as a commission was not obeyed, they have the right as a court to act. We have all the paraphernalia of a court. We have the marshal, called a bailiff, who serves our processes; we have the right to summon the railroad if it violates any of our enactments; we have the power and the right to make enactments, and when we summon the parties we have the right to try them and impose a fine on them and to issue a process from our clerk's office, and to enforce that fine. I doubt whether there has ever been a body created that so distinctly combined legislative, judicial, and administrative functions of that kind.

The CHAIRMAN. And inquisitorial?

Mr. CRUMP. Yes, sir; and inquisitorial. But, mark me—no, Mr. Chairman, I do not say inquisitorial, because I do not think it is proper. Either the Supreme Court of the United States is wrong or it is not inquisitorial to do what the Government has the right to do, and to do what it is its duty to do. I come back to this original proposition, that the making of rates and the regulation of railroads is an exercise of governmental power. And when we create a tribunal we are not creating a tribunal to pry into private secrets or to exercise dominion over private property, but we are taking away from private persons governmental functions which they have been allowed to discharge. So that I say it is not exactly inquisitorial, in my mind.

The CHAIRMAN. When I asked you the question I was under the impression that the word "inquisitorial" might cover duties and purposes that were not offensive.

Mr. CRUMP. I understood, of course, the meaning of the term, sir. But I was only coming back to this original principle, which I had in mind. I will not detain the committee any longer. I think that there are tribunals in the country that can be entrusted with the making of laws and the executing of them at the same time.

STATEMENT OF HON. WILLIAM B. HEARST, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK.

Mr. HEARST. I have practically finished with my bill, but I notice that two bills have been introduced since I addressed the committee the other day and that those bills contain some provisions that are not in my bill, and they do not contain other provisions that are in my bill.

The CHAIRMAN. Will twenty minutes be enough time for you?

Mr. HEARST. That will be ample.

Mr. RICHARDSON. What bills are these that you speak of?

Mr. HEARST. Bills introduced by Mr. Esch and Mr. Townsend.

Mr. ADAMSON. Have you not seen the bill introduced by Mr. Davey, also?

Mr. HEARST. Yes, sir; I saw something introduced by Mr. Davey.

Mr. MANN. And by Mr. Shackleford and others?

Mr. HEARST. I made particular reference to the bills of Mr. Townsend and Mr. Esch because they contain many provisions similar to those in my bill, and, as I say, they contain some provisions that are not in my bill, and my bill contains some provisions that are not in theirs, and I do not propose to criticise, but simply to say why I did not include certain provisions and why I did include others which are not in the bills which Mr. Townsend and Mr. Esch have just introduced.

As the time is very limited, I suggest that I take merely the most important provisions.

Section 1 of Mr. Townsend's bill establishes a court of transportation. I think perhaps the name "court of transportation" is fully as good as the name "court of interstate commerce," which is in my bill.

My bill provides for three judges at salaries of \$10,000 a year each. Presumably, better judges can be obtained for \$10,000 each than can be obtained for \$8,000. Anyhow, if they are to be the best grade of judges, they should receive compensation in proportion to their excellence. I maintain that it is better to have three first-class judges with first-class salaries than to have five slightly inferior judges at \$8,000 a year, or seven still slightly inferior judges at \$6,000, or nine at \$4,000, or a dozen at \$1,000 a year. I believe in good salaries for good judges.

Section 2 does not call for special comment. It provides, like my bill, for sessions of court in any part of the country.

Section 3 confers upon the court jurisdiction over all suits brought to enforce the act, and requires no special comment, embodying as it does the principles of my bill.

Section 4 merely amplifies section 3 by providing generally that the court shall possess all the powers of a circuit court of the United States.

Section 5 of Mr. Townsend's bill provides, as does my bill, that the hearing in the transportation court shall be upon the record made below, but it contains a clause permitting evidence which the railroad claims could not have been with due diligence discovered before the trial by the Commission to be offered there. I did not include that in my bill, because it seemed to me that anything of that kind simply left a large loophole, and would result inevitably in the double trials which we are so anxious to avoid and which are such an abuse under the existing system.

Mr. ADAMSON. While that may be right, ought not the new hearing to be had before the Commission and not before the court? Ought not the additional testimony to be heard before the Commission? Do you think it is right for the Commission to be reversed on testimony that it never heard and passed upon at all? If there is going to be a rehearing as provided on the showing of due diligence on the part of the railroad, ought not that rehearing to be had before the Commission and not before the court that is reviewing the proceedings of the Commission?

Mr. HEARST. That is, in a way, the point that I was trying to make. But I do not think the case should be remanded to the Commission on that point. The case might properly be remanded if the Commission had refused to accept evidence which the defendant had offered and which ought properly to have been accepted.

Mr. TOWNSEND. Does the bill that you are discussing make provision for that?

Mr. HEARST. The bill which you introduced, Mr. Townsend, so far as I am able to understand by a hasty reading of it, in section 6 provides that the court may examine witnesses and bring before it parties from all over the country. This is, of course, only necessary when there is going to be a double trial, and it seems to me that your bill contemplates to that extent the continuation of the double-trial evil. It leaves a loophole for the double trial and for possible delays and the

other evils of double trials. I do not presume to dictate what you should put in your bill, but I say that I did not introduce it in my bill for the reasons given.

Furthermore, it should be observed that my bill provides for and contemplates such expeditious action after the decision of the Commission that there will be practically no opportunity to discover additional evidence, since a very brief interval will elapse between the trial before the Commission and the hearing under appeal.

Mr. ADAMSON. You do not hope for the millennial condition of the law that will cut off all possibilities of litigation?

Mr. HEARST. Not unless you pass my bill, and I doubt very much if you will do that. [Laughter.]

Section 7 of the Townsend bill contains no noteworthy provisions except that authorizing the transportation court to grant temporary restraining orders at any time previous to the hearing of the appeal. The opportunities for appeal are more limited under the language of my bill, which says the court "can only grant stays in case of obvious and manifest error." The whole object of my bill, as I explained it yesterday, is to prevent delay and secure effective action in the briefest possible time.

Section 8 of the Townsend bill provides for the summoning of talesmen to act as jurors in the District of Columbia in cases involving right of trial by jury. The cases contemplated are damage suits for reparation which must be brought before a jury. The present procedure is that when the Commission awards or recommends reparation, the shipper proceeds before a jury in any circuit or district court where he resides to sue for damages, and on presenting the order of the Commission rests his case, whereupon the burden is thrown upon the railroad of showing that the order of the Commission is unjust. Under these circumstances it seems to me that the shipper is very likely to get fair consideration and full justice in each case, and there is not any complaint about the effectiveness of this procedure, once the order of reparation has been made. To transfer all of these jury cases to the transportation court would greatly burden the court and interfere with its effectiveness in other cases.

Moreover, if I understand the provision of the bill rightly, this section provides for the summoning of talesmen to act as jurors in the District of Columbia by the marshal here, and consequently all cases of that kind would have to be heard here. And it would be a great hardship to compel complainants in all these cases to come to the District of Columbia for trial instead of being able to go before a jury in their own neighborhood.

Mr. TOWNSEND. I will state to you that, in my opinion, there should be an addition there, the same as there is in the last provision of the bill, that the court may order the marshal of the United States for the District of Columbia, or for any district where the court is held, to summon talesmen, if it makes provision that the chief justice may send two of the justices anywhere in the United States to try a case.

Mr. HEARST. Yes; with that correction, then, we will pass from that.

It still seems to me that this court is likely to have a greatly increased amount of business before it on account of the increased powers given to the Commission—the increased effectiveness given to the Commission—and that a great many cases, probably four or five times as many

cases as now come before the Commission will come before the Commission when it is believed that some effective aid may be obtained. The proposed court would then be unnecessarily burdened by these reparation cases, which are effectively and adequately dealt with under the present system.

Mr. TOWNSEND. Was that the experience during the first ten years when this power was exercised by the Commission?

Mr. HEARST. The first ten years were very largely employed in deciding what powers the Commission had through cases before the courts. It seems to me that in nearly all those cases which Mr. Spencer referred to the other day, cases in which the Commission was reversed in technicalities, that it was not very distinctly known what the powers of the Commission were, and as the cases before the court largely resulted in reversals, shippers must have been doubtful and discouraged and unwilling to bring cases before the Commission. I should think that it would hardly be fair to make a comparison with that period.

Mr. ADAMSON. I was going to ask this; if, instead of largely increasing the litigation, it is not true that the chief advantage to be hoped from securing a more perfect system is not this, that the carriers, knowing that correction and regulation would certainly follow in case it was necessary, would either adjust their rates more carefully themselves or satisfy complainants and compromise the matter before going into litigation?

Mr. HEARST. I think that is certainly to be hoped for. I do not say that it would increase the present amount of litigation, because I doubt if anything could increase the present litigation. Each particular case, like my coal case, which has taken over two years, is involved in an immense amount of litigation, and it is only a typical case.

Mr. ADAMSON. That was because of the system applying at that time to that case. If you had had a system from which it would have been possible to prejudge what the result would have been, would not they have compromised that case?

Mr. HEARST. I think they might, but if they have extended to them the opportunity to raise disputes on innumerable particulars they will certainly take advantage of it. If you give them opportunities for appeal after appeal they probably will continue to appeal and appeal. I am coming to the question of the granting of appeals and the granting of stays.

Mr. ADAMSON. The law already vests the common-law courts with power to grant an appeal, and it is immaterial whether you fix an appeal, is it not?

Mr. HEARST. Hardly; because you can fix the appeal, as I did, on review to the interstate-commerce court, and not carry it up to the Supreme Court of the United States except in cases where a grave constitutional question is involved. That is one of the chief features of my bill.

Mr. TOWNSEND. Who is to decide what a grave constitutional question is?

Mr. HEARST. The Supreme Court frequently decides that question by a writ of certiorari. I am not a technical lawyer, but I believe that is the method.

Mr. ADAMSON. Does not a court often decide the thing in the outset, before it goes to the court?

Mr. HEARST. Yes, sir; and I provided in my bill that either the interstate-commerce court or the Supreme Court may decide that a case involves questions that should be reviewed by the Supreme Court. But the very distinct and notable difference is that practically the same amount of appeals are allowed in Mr. Townsend's bill as are allowed now, as you said just a moment ago, if I understood you, while in my bill that is not the case. The object is to secure expedition and effectiveness, and the appeal is limited to the one court.

Mr. ADAMSON. And the more of that you get the less litigation you have, because the railroads will find it out and fix their own rates.

Mr. HEARST. That is theory, and it may be correct, Mr. Adamson; but on the other hand, it seems to me, as I said, that the railroads are likely to take advantage of every opportunity for delay, and there is no reason for providing them with very many opportunities. That is my opinion. I am simply explaining why I did not put that in my bill.

In my coal case, which I cited the other day, we found that the appeals took a year's time, and then the case was finally decided by the Supreme Court upholding the Commission in every point. One of the objects of my bill was to prevent that long delay and those numerous appeals. Naturally, I think my bill is preferable on that point.

Another thing is, despite the giving of the bond in the appeal to the Supreme Court, a situation must necessarily continue to exist which will work harm to the consumer—to the common people—say, for instance, as in the coal case. I speak of that as I am familiar with it. The rate is \$1.55. Suppose the Commission should decide that a just rate was \$1, and suppose that the appeals permissible under this bill consume, as they actually did in my coal case, a year, the rate during that period would remain at \$1.55 and the coal sold in New York would be based on the high rate, and the price would necessarily be in proportion to the high rate, and during that period, therefore, the consumer would be paying 55 cents more for his coal than he would if those appeals were not involved. And you can not recompense the consumer by any bond. You can only make that bond apply to the shipper.

Mr. ADAMSON. How could you fix a condition in a bond where a man was a business man whose business was being discriminated against, how could you fix a provision in a bond which would protect him against the future consequences of that unjust rate? During the pendency of the litigation his business might be wiped out of existence entirely.

Mr. HEARST. I did not understand that.

Mr. ADAMSON. You say that you can not provide for the consumer, but you can for the shipper. Now, the railroad makes a bond, suppose, for some excessive rate that the shipper pays, and that is all that you can get them to do?

Mr. HEARST. Yes, sir.

Mr. ADAMSON. If they were to give a bond covering all his business, the court would say that you can not testify about speculative damages, and that would shut him out, and by the time the litigation is ended and the railroad is compelled to pay back the excessive freight, the man's business is wiped out by the discrimination. How would you provide for that?

Mr. HEARST. I do not provide for any bond at all.

Mr. ADAMSON. How can it be done at all?

Mr. HEARST. I provide that this interstate commerce court, as I call it—transportation court, as Mr. Townsend calls it—shall review the finding of the Commission, and that there shall not be any appeal from it except in case of grave constitutional questions.

Mr. LOVERING. So far as the mere shipper is concerned, the object could be accomplished by impounding the difference, could it not?

Mr. HEARST. Possibly. But it seems to me there is no way in which you can recompense the consumer.

Mr. LOVERING. No. I agree with you there.

Mr. ADAMSON. It would protect the carrier to impound the excess, but it would not protect the shipper to impound, because it would ruin his business in the meanwhile before a decision would be arrived at.

Mr. TOWNSEND. Now, to get my notion a little clearer before you, as you have been discussing my bill: You say in cases where grave constitutional questions are involved there shall be an appeal, and that, you say, is a matter to be decided by the Supreme Court as to whether an appeal shall lie or not. You do not deny, of course, that that question will be raised by every aggrieved party, or by the railroads, especially if they are aggrieved, and that they will claim that there is a grave constitutional question involved? The bill here provides that the court may decide when an appeal shall be taken. It also provides for this bond, for the reason that I know of no law that could be passed that would prevent the suing out of a writ to stay proceedings of any kind until a review is had if it should appear that there was a serious defect in the law. Would you not want a bond under those circumstances?

Mr. HEARST. I do not see any particular objection to a bond. Your bill seems to me to allow greater latitude for appeal than my own does. If it is the same on that point as my bill I have not any criticism to make, but I believe that if the cases before the Commission under an effective law increase, as I think they will, and all cases are allowed to be taken up to the Supreme Court, as they will be under your bill, there will not only be great delay, but the Supreme Court will have to abdicate all of its other functions and become merely a supreme interstate commerce court.

The CHAIRMAN. The other day certain questions were propounded to you that at the time you were not able to answer in connection with this coal case that you have prosecuted. I would like to ask you now if you could tell the committee the value of the royalty of a ton of coal, the cost of mining it. You have given us the just rate for transporting it. I want to get that information if you have it now.

Mr. HEARST. I did not look it up, I am sorry to say. I could give the facts you require generally, but I would rather not; I would rather give them definitely and specifically, if you will allow me to do that.

The CHAIRMAN. If you will furnish that in a memorandum I wish you would do so.

Mr. HEARST. Yes, sir; I will do so. There is another bill, which has been introduced by Mr. Esch, and I would like to touch on that in some degree where it differs from my bill, and explain my bill in that connection. I think that it differs in the first paragraph. The Commission has now, under the present act, power to institute proceedings on its own motion, and by the existing act it is given the power to institute inquiries into the business of common carriers, and the

Supreme Court has in several cases announced, as in the coal case, that it was the duty of the Commission to carry on its investigations of its own motion, and that it had such powers; and Mr. Esch's bill, which says that the Commission may proceed on complaint, it seems to me, may limit those powers rather than enlarge them; may limit the present powers of the Commission, although undoubtedly Mr. Esch's bill in this paragraph confers other very largely increased powers, namely, the power to fix rates. But I think my bill, which has also given the Commission the power to fix rates, but omits the words "on complaint," is better to that extent. Certainly if the Commission discovers unjust conditions it should have the power to remedy them with or without complaint, provided the facts have been properly developed and tried out before the Commission.

Then the question of part water and part rail transportation is handled in my bill, as I do not understand it to be handled in Mr. Esch's bill. The existing act covers traffic part rail and part water for shipments when made over a rail and water route which is all under one management or under one control. My bill covers part rail and part water transportation, even when the water line is independent.

Mr. ADAMSON. What do you understand to be the desirable purpose of seeking to put water transportation under the commerce law?

Mr. HEARST. To prevent a discrimination that may occur on water as well as on land.

Mr. ADAMSON. Is it for the purpose of forcing them to charge higher rates in order that the railroads may compete with them?

Mr. HEARST. I should not express it that way.

Mr. ADAMSON. How would you express it? Is it not because they give lower rates than railroads can give that this is desired, because it is thought desirable to raise them so that the railroad can compete with the water rates?

Mr. HEARST. It is because they discriminate.

Mr. ADAMSON. Charge lower rates than the railroads?

Mr. HEARST. May charge lower to one individual, and may not charge lower to another individual. In other words the definition of the word discrimination.

Mr. ADAMSON. Is that all the reason that you have heard of or know of?

Mr. HEARST. That seems to be the chief reason.

Mr. ADAMSON. You never heard that it was desirable to prevent them charging such low rates as were unfair to the railroads?

Mr. HEARST. I never heard that.

The CHAIRMAN. Was it intended by your bill to include other shipments? European shipments, for example?

Mr. HEARST. No, sir; it was not. I replied to that question day before yesterday, Mr. Chairman.

In my bill all the different kinds of water traffic—river traffic, lake traffic, and coastwise traffic—were put under the provisions of the commerce act if they were connecting lines, no matter whether the water roads were owned and controlled by the railroad lines or not. That is, it applies where a shipment is made from Albany to Chicago, to Omaha, to Ogden, and then to San Francisco, and it also applies if the shipment is made from Albany through New York to Panama and thence to San Francisco, and the rail and water lines do not have to be under the same control.

That is, the present interstate law does not include such a shipment unless the lines were under one control, and my bill makes it apply even though they are not under one control.

Mr. MANN. Would that eliminate the use of tramp steamers?

Mr. HEARST. I do not see how it would. I do not see how it would eliminate anything.

Mr. MANN. If all water transportation, say on the lakes, is put under the interstate-commerce act, the tramp steamer evidently could not file a schedule of rates?

Mr. HEARST. Why could it not?

Mr. MANN. It would not be a tramp steamer if it could file a schedule of rates.

Mr. HEARST. Is there any particular advantage in having it known as a tramp steamer? It could file rates. It has rates unquestionably, and if it has them, it might file them.

Mr. ADAMSON. If a line from New York via Colon, Panama, to San Francisco, under the control of the interstate-commerce act, should charge a rate lower than the transcontinental railroad charged, and if the Interstate Commerce Commission had power to raise that rate through Colon, Panama, so as to equalize it by raising it to the railroad rates, there would be no benefit derived by the construction of the Panama Canal, would there?

Mr. HEARST. My idea is not to have the Panama route raised to the same amount as any other route. Obviously a water route could and would charge less than a rail route, but it could not or would not be allowed to discriminate between shippers and give rebates in my bill.

Mr. ADAMSON. We are not confining our remarks to any one bill. I am speaking of all these bills.

Mr. HEARST. Yes, sir. I would not think that it was necessary to have any rate raised at all. There might be very good reasons why it should be lowered. But my plan is to bring under the interstate-commerce act these part rail and part water classes in order to prevent discriminations and rebates and other abuses that the present law does not touch if the water lines are independent.

The Esch bill omits to make any provision to prevent a railroad from posting joint rates that have not been concurred in by all connecting carriers.

Mr. ADAMSON. That is, in the original act that this seeks to amend, is it not?

Mr. HEARST. There are two other provisions in this section of my bill to which no attention is paid in the Esch bill, but which I deem worthy of mention. One, the requirement that before any change in rate shall be made thirty days' notice shall be given to shippers and the Commission, for the reason that very short notice, such as permitted at present, is an obviously easy method of granting favored rates.

SECTION 6.—JOINT RATE.

For instance, the carriers can agree on a joint rate, but wrongfully agree so as to bring about a preference or rebate, as is the favorite method to-day, instanced by the terminal railroad abuses.

My bill makes it clear that the jurisdiction of the Commission extends to these abuses and authorizes the Commission to issue orders in relation to joint rates and the division thereof.

THE PROVISION OF OTHER FACILITIES, PRIVATE CARS, ETC.

The Esch bill makes no provision that I can understand to apply to the private-car abuse, and that is one which in the testimony before this committee has been shown to be one of the greatest abuses.

My bill makes provision for that in two places in section 6, where the Commission is authorized to issue orders affecting the apportionment of cars, the provision of other facilities connected with and incidental to transportation. Refrigerating obviously comes under the head of facilities connected with and incidental to transportation.

Again, in the last paragraph of section 7, my bill provides—

in case any person, company, or corporation other than a carrier, who may be interested in the traffic or transportation involved, shall be included as a party defendant or respondent in addition to the carrier in a proceeding before the Commission, orders may issue against such additional party in the same manner, to the same extent, and subject to the same provisions as are authorized with respect to carriers.

In other words, if the abuse under consideration were a private-car abuse and it was proper and necessary to make Armour & Co., for instance, a party defendant as the owner of the private cars and as one interested in traffic or transportation involved, the orders of the Commission would be as effective against Armour & Co. as though Armour & Co. were the railroad corporation.

CLASSIFICATION.

There are a number of other things with which I do not want to take up the time of the committee, but which I have put in my bill after full consideration, and which are certainly advantages if not absolutely essential.

My bill provides that the Commission may issue orders regarding the classification of freight articles involved in the proceeding, and this is important, for obviously a rate can be raised as effectively by transferring it from one classification to another as in any other manner. In fact, in the hay case which has been under consideration for several years, hay was transferred by the railroads from one classification to another, thereby raising the rate. The Commission endeavored to prevent this. The railroads maintained that the Commission had no authority, and that case has been under advisement altogether about three years.

This clause proposes to give the Commission authority in such cases. And furthermore it proposes to give the Commission authority to issue orders affecting through and continuous carriage over connecting lines of roads, including intersecting switches or connections.

And it furthermore gives them authority over abuses analogous to the terminal railroad abuses.

Another important provision in my bill is the one that compels the railroad to furnish cars to a shipper if by any means they can furnish cars, and does not compel him to prove that he is being discriminated against and to show that cars are being furnished to somebody else to his disadvantage. For instance, in my coal case, it developed that the Reading Railroad for certain purposes withdrew all tariffs on coal to New York tide water, and that when these tariffs had been withdrawn no shipper was allowed to have cars to ship coal from the mines to that tide-water point.

The object of this was of course to keep the price of coal from breaking in New York. No matter what the hardship might be to the shipper by having his revenue cut off for weeks at a time, the railroad persistently refused to handle any traffic to that point. In other words, it abdicated its function of common carrier. My bill cures that evil, enables the shipper to get an order for cars and have his product transported. And on the application the shipper is not required to show that any other shipper is being unduly preferred. The mere failure to forward his freight is enough.

Finally the Esch bill refers to a transportation court, although there is now no transportation court created by law. And unless the Townsend bill, which provides for a transportation court, should pass, the Esch bill would have no meaning.

The Esch bill and the Townsend bill are largely my bill divided between them, with a few things that I consider good omitted and a few things that I consider bad added.

The CHAIRMAN. You have consumed twenty-five minutes, Mr. Hearst.

Mr. HEARST. Very well, Mr. Chairman. I will file what notes I have left with the committee instead of continuing the argument.

My notes relate to the Quarles-Cooper bill and to decisions by the courts indicating that Congress has power to delegate the power to fix rates to a commission, but may not impose the power of fixing rates upon a court.

POINTS AGAINST QUARLES-COOPER BILL.

I. Permits taking additional testimony in Federal courts on review.

(1) This encourages railroads in practice of not disclosing their side of case before the Commission, thus multiplying chances of erroneous finding by Commission, with incidental and protracted delay.

(2) This means a double trial, one of the evils of the existing law, thus imposing great expense on complainant and a useless burden upon the courts, which are already far behind their calendars.

II. Permits railroads to select the judge to retry case from any circuit through which roads run.

(1) This renders it quite feasible for the railroad to insure trial of every case before friendly judge, who, if not absolutely controlled, is amenable to influence of political and local considerations.

(2) This leads to conflicting and erroneous decisions because of the large number of judges from whom the selections can be made, most of whom have had no training or experience in this special branch of law.

III. Makes it almost a matter of course that all orders would be stayed for a year or more.

(1) Because with the power of selecting the judge and the wide field to choose from, it would be obviously easy for a railroad to find a judge who would grant a stay. Witness the practice in New York State of procuring from up-State judges "certificates of reasonable doubt" in criminal cases.

IV. Permits an appeal to the Supreme Court in every case.

(1) The Supreme Court is already overburdened, and as these appeals are made preferred cases, the progress of other cases, which now require two years or more to be reached, would be greatly impeded.

(2) Adds enormously to the expense and difficulty of successful prosecution, and thus discourages resort to the law.

V. Fails to provide effective means of compelling before Commission production of papers and answering of questions.

(1) This is one of the worst evils of the existing law, under which a case can be halted for a year while the relevancy of a paper or of a question is being litigated all the way up to the Supreme Court, as in the coal trust case.

This bill does not touch matter of terminal railroads or private car abuses at all, and these are among the greatest and most outrageous abuses existing.

MERITS OF HEARST BILL.

I. Avoids all the enumerated objections to Quarles-Cooper bill.

II. Provides a trained and experienced court for this special branch of law.

III. Judges less liable to be controlled by railroads, for, as every case would come up before them and they would be conspicuously before the public, a positive tendency to favor the railroads would be patent and therefore unsafe and improbable.

CONSTITUTIONAL QUESTION.

COMMISSION CAN FIX RATE.

SECTION 1. Congress has power to regulate interstate commerce. (Constitution, section 8.)

Power to regulate includes power to fix a rate.

Maximum rate case (vol. 167, U. S.—opinions of Supreme Court), Judge Brewer: "Congress might itself prescribe rates."

Reagan case (154 U. S.):

The power of fixing rates is not a matter within the absolute discretion of the carriers, but is subject to legislative control.

"The legislature has power to fix rates." (143 U. S.)

THIS POWER CAN BE DELEGATED.

Maximum rate case (167 U. S.):

Congress might itself prescribe the rates, or it might commit to some subordinate tribunal this duty.

Reagan case (154 U. S.):

There can be no doubt of the general power of a State to regulate the fares and freights which may be charged or received by railroads or other carriers, and that this regulation can be carried on by means of a commission.

Similarly decided in State railroad commission cases. (116 U. S.)

In maximum rate case, where the court held that under the existing law the Commission did not have power to fix a rate, its decision was based solely on the fact that the express words giving power were not contained in the act and that it would not imply such broad powers. No suggestion was made that this power could not be delegated. On the other hand, the court quoted the statutes from a dozen or more States where the power to fix rates was given to commissions; such as

Alabama, California, Florida, Georgia, Illinois, Iowa, Minnesota, Mississippi, New Hampshire, South Carolina, Kansas, and New York.

[New York statute.]

If in the judgment of State railroad commissioners it appears necessary that additional terminal facilities shall be afforded, or that any change of rates of fare for transporting freight or passengers or in the method of operating a road or conducting its business is reasonable or expedient in order to promote the security, convenience, and accommodation of the public, the board shall give notice and information in writing to the corporation of the improvements and changes which they deem proper. The supreme court, at special term, shall have the power in its discretion in all cases of decision and recommendations by the board which are just and reasonable to compel compliance therewith by mandamus.

NOT CONFINED TO COMPLAINT.

Reagan case (154 U. S.), Judge Brewer:

It is not to be supposed that a commission appointed under the authority of any State will ever engage in a deliberate attempt to cripple or destroy institutions of such great value to the community as the railroads, but will always act with the sincere purpose of doing justice to the owners of railroad property as well as to other individuals.

Coal trust case (194 U. S.):

Powers conferred upon the commission, under section 12 of the act, to inquire into the management of the business of all common carriers, subject to the provisions of the act, and keep itself informed as to the manner and method in which the same are conducted.

Maximum rate case (167 U. S.):

The Commission is charged with the general duty of inquiring as to the management of the business of railroad companies and to keep itself informed as to the manner in which the same is conducted.

CONSTITUTIONAL QUESTION.

COURT CAN NOT FIX RATE.

Reagan v. Farmers' Loan and Trust Company (154 U. S.):

The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work.

This rule specifically restated in *St. Louis and Santa Fe Railroad Company v. Gill* (156 U. S., 662).

San Diego Land and Town Company v. National City (174 U. S., 739):

But it should also be remembered that the judiciary ought not to interfere with the collection of rates established under legislative sanction, unless they are so plainly and palpably unreasonable as to make their enforcement equivalent to the taking of property for public use without just compensation.

Trammel v. Dinsmore (102 Fed. Rep.), 800 circuit court of appeals:

The formation of a tariff of charges for the transportation by a common carrier of persons or property is a legislative or administrative rather than a judicial function. The courts are not authorized to revise or change the body of rates imposed by the commission.

Western Union v. Myatt (98 Fed. Rep., 335):

Concise stated, to prescribe a tariff of rates and charges is a legislative function; to determine whether existing or prescribed rates are unreasonable is a judicial func-

tion. That this is the settled doctrine of this country is no longer open to question. It is firmly fixed in the body of our jurisprudence. It follows, therefore, as a corollary of this doctrine that courts have no power to prescribe a schedule or rates and charges for persons engaged in a public or quasi public service, because that is a legislative prerogative. The legislative prerogative is the power to make the law to prescribe the regulation or rule of action; the jurisdiction of the courts is to construe and apply the law or regulation after it is made. The two functions are essentially and vitally different.

The fundamental reason for these decisions is that all power to regulate commerce, from which flows the right to fix rates, is derived from the Constitution. Where the Constitution confers no power, no power lies. The Constitution has expressly given this power to Congress and has refrained from giving it to the judiciary. Fundamentally therefore and wholly apart from the constitutional separation of the Executive, the legislature, and the judiciary there is no possible basis for asserting that the courts might fix a rate.

If anything more is needed, see Hayburn's case (2 Dallas, 409), *United States v. Ferreira* (54 U. S., 40), and *Interstate Commerce Commission v. Brimson* (154 U. S.).

All to the effect that it is not in the power of Congress to assign to the courts of the United States any duties except such as are properly judicial and to be performed in a judicial manner.

THE COST OF MINING COAL.

Replying to the questions of the chairman concerning the cost of mining and preparing anthracite coal, I find on referring to the testimony that the average cost per ton to the Philadelphia and Reading Coal and Iron Company, the largest company in the trust, for six months ending April 30, 1904, was \$2.31 a ton, and for the six months ending April 30, 1900, \$1.79 a ton, showing an increase of 52 cents a ton. These figures cover all sizes. I might state parenthetically that the average increase in the selling price of the domestic sizes during the same period is \$1.14 a ton. This period of increased cost includes both advances in wages after the two strikes. It is clear that the coal companies have not only made the public bear the entire burden of the strike awards, but have actually turned the strikes into a source of profit.

The following figures for the Reading Company, just mentioned, for the month of April, 1904, during which month the cost of mining and preparing coal was \$2.06 a ton is fairly illustrative of the elements that make up the cost.

Mining, \$1.43; repairs, \$0.07; deadwork, \$0.23; colliery improvements, \$0.17; royalty, \$0.06; department expenses, \$0.07; proportion of general expenses, \$0.02. The cost to the Delaware and Hudson Company for mining coal during the month of January, 1904, was \$2.14 a ton, including a sinking fund of 4 cents a ton and general office expenses of 6 cents a ton, and the various other elements mentioned in the Reading statement.

These figures may be taken as fairly typical of the other companies, including the Lehigh Valley Coal Company, where the cost was \$2.25 a ton, and it was claimed by the company that the profit for the year ending June 30, 1904, on a business of 5,000,000 tons was but \$0.079 a ton. They claimed to account for the discrepancy between the sell-

ing price of \$5 and the cost of \$2.23, plus the freight rate of \$1.55, by alleging that on the small sizes, such as pea coal and the like, which constitute about 40 per cent of the total output, there is a loss after paying the freight rates, because the selling price of the smaller sizes averages under \$3 a ton.

These figures sufficiently show the intimate relation between the freight rate and the selling price of coal. They demonstrate with equal force that coal freight rates are so exorbitant that it is with the greatest difficulty that the mining company is able to keep its head above water, and its only chance of making a reasonable profit, after paying excessive freight, is by increasing the selling price to the consumer. This is exactly what has been done. The freight rates are the key to the situation. It is at these unreasonable freight rates maintained by a combination of railroads in control of both the means of transportation (and most of the production) that I am striking in my pending suit before the Interstate Commerce Commission.

STATEMENT OF WALKER D. HINES, ESQ.

Mr. HINES. Mr. Chairman and gentlemen of the committee, I appear here in behalf of the Atlantic Coast Line and the Louisville and Nashville Railroad. Mr. Erwin, president of the Coast Line, was here yesterday and expected to make a preliminary statement on behalf of that company, but he was called to New York by important engagements, and as we had discussed the matter, and our views coincided, he left the matter to me entirely.

It would perhaps be well for me at the outset to state in a general way what opportunity I have had to form conclusions on this subject. As early as 1895, while I was in the law department of the Louisville and Nashville Railroad Company, I began a close study of the interstate-commerce act on account of traffic questions then arising in Kentucky. In 1897 I enlarged that study on account of the efforts which began then to secure the rate-making power for the Commission. Until 1901 I remained in the law department of the Louisville and Nashville Railway Company and continued to make a special study of these questions. I was then made first vice-president of the company, in charge of traffic matters as well as law matters, and until last July, when I resigned from the company to enter the general practice of the law, I continued to give the question special attention.

I may say on behalf of the two railroad companies for which I appear, and I think on behalf of railroads generally, that there is no effort to deny the propriety or necessity of effective regulation of the railroads. I think if the day ever existed, and probably it did, when railroad managers denied the right or propriety of it, that day has passed. The public certainly expect effective regulation; and I realize and I believe that the railroads generally realize, that effective regulation must be had. The question is, What is the best effective regulation? What are the evils that call for regulation? What regulations will correct those evils? And what are the possible evils that may flow from any character of regulation that may be adopted?

As this committee is considering various bills which nearly all

involve in one way or another the rate-making power, and as that seems to be the vital thing now under consideration, it seems proper at the outset to consider briefly what is the necessary scope of the rate-making power, if conferred upon any tribunal. I am glad to say that the fallacy which has misled a great many people, that you can give a rate-making power which is not a general rate-making power, seems to have been pretty effectively exploded.

We still hear some talk about not making rates in the first instance, not making original rates, making rates only on complaint and notice, and after investigation, but I think it is generally recognized that if you put all those incidents in it can not change the substantial and the general character of the power. Suppose, to illustrate it briefly, that Mr. Jones is appointed traffic manager of a railroad company. He can not make rates in the first instance, because they are already made. He does not undertake to make rates generally; he does not undertake to make rates except when a case arises for considering the propriety or the applicability of an existing rate to a new situation, or on account of some trouble that has arisen as to an existing situation. Presumably he does not make a rate without finding out what he is doing.

You give the power to any tribunal to make a rate on notice and after investigation, and you give that tribunal the power for all practical purposes to do exactly what the traffic manager of that railroad company would do. No matter how you restrict it, if you say that it shall make only one rate in a proceeding, or that it shall make a rate only on complaint, that is simply a difference in incidents; it is not a difference in substance, and a tribunal vested with the power in the most restricted language which could be devised would still have the power, one at a time, it may be, but still the power, to change every rate it thought ought to be changed. If it could not originate a complaint itself, you can not find a rate anywhere that somebody is not ready to complain against, if he thinks that he is to be benefited by it, so that complaints would come, and fullest opportunity would be given to change every rate which that tribunal wanted to change. And, no matter how you frame the language that confers the power, the fact still remains that a tribunal with the rate-making power is the traffic manager of every railroad company in the United States to whatever extent it chooses to exercise that power.

Now, I think the situation ought to be, and I think now is being, faced with a full appreciation that there is no sticking your head in the sand on that proposition; that if you give the rate-making power, you give the rate-making power, and that there is not a little rate-making power and a big rate-making power, but there is simply one, and you give it or withhold it.

Now, let us consider what is meant and what will be some of the important effects of giving that power to any governmental tribunal. In the first place—and this is the point that I think has not been generally touched upon or appreciated—whenever any tribunal undertakes to make a railroad rate it necessarily becomes the perpetual administrator of that rate. It is not like a case in court. When a court decides a case, that case is done. The court goes on and decides some other case. But when a railroad commission or any tribunal makes a rate, which is necessarily a rate for the future, its work is not done; its work has just begun.

The rate-making business is never finished. You make a rate, but that does not finish that rate. It is always a question with you as to the application of that rate to new conditions or to old conditions which have been overlooked, or the adjustment of it to existing rates, to which it must bear a relation. There is scarcely an occasion when the traffic officers of railroads undertake to prescribe a new adjustment, or to readjust an old adjustment of rates, but that almost as soon as it is done something does not crop out that has not been thought of that needs adjustment to additional conditions. The most experienced traffic man, one who has confined his observations to traffic in a particular section and is as near a specialist on the traffic of that section as anybody can be, can not possibly make a rate adjustment affecting several places but what he will find as soon as he does it that something else has to be done, and something may have to be done next month and something else next year, in respect to that adjustment. You take a tribunal that attempts to do that for the whole United States, and which can not have as to any special section the special knowledge that the traffic officers in that section have with respect to it, and that necessity of changing what you have done to meet things you have overlooked becomes more pressing and more general than it can possibly be under present conditions.

Moreover, there is such an interdependence of rates that if one is fixed something has to be done for another. For a rate that is fixed for one point you will have perhaps twenty points that will straightway find they have been affected by that reduction. As I said to begin with on this point, when the Commission fixes a rate it simply begins its work as to that special rate. When it makes a rate it does not get a rate off its hands, but it gets one on its hands. When it makes a number of rates it does not get that much work behind it, but that much more work ahead of it, because it is bound to administer those rates and change them from time to time. This will be particularly true with respect to the adjustment of rates between localities, which, as is apparent from the hearings here, is the principal sort of work that a rate-making tribunal would undertake. You prescribe an adjustment between localities, and, as I say, other localities straightway crop up that had not been thought of before, and it has to be adjusted to them. Perhaps next year some one commodity will be affected by new conditions—a new place of production; or the discovery of a new source of supply, or something of that sort—and that adjustment, while proper generally, may have to be changed with respect to that one commodity.

Mr. MANN. Perhaps you can give me a little light on one question. Last year the Interstate Commerce Commission reported that over 160,000 tariff rates or tariff schedules were filed with the Commission. Do you know whether each one of those contained a change in some rate?

Mr. HINES. Not necessarily; but in all probability it involved some change in some rate.

Mr. MANN. Is there any occasion for filing new tariff schedules unless there are changes?

Mr. HINES. Rarely, unless they want to put a tariff and all its supplements together and reprint it. Generally it involves some change in some rate; and I was just going on to say that all these traffic meet-

ings that are constantly being held, and these classification meetings that are constantly being held all over the country, are for the purpose of considering new conditions or conditions that had been overlooked at the time the rate adjustment had been fixed. Just to the extent that a rate-making tribunal acts on this matter, it draws to itself the administration and the decision of all those questions. So that the difficulties of administering this matter would increase in a most remarkable progression. Every time an adjustment is made, that brings so much more work to the Commission. When two adjustments are made it has got to manage both of them, in addition to considering all new cases.

In view of the extent of this country, and the complication of commercial conditions which affect railroad rates, I do not believe it is possible to exaggerate the conditions that would exist after a few years when the Commission had undertaken, as it undoubtedly would undertake, to prescribe various important rate adjustments on different commodities. There would be demands, almost day by day, for some change or some modification of some adjustment. The Commission, with its various duties, now finds it difficult to handle these matters with expedition. How much more difficult is it going to be when it is the actual and perpetual administrator of every rate that is made, and when the railroads can not meet new conditions as they arise, but must ask the Commission to meet them for them?

One of the glories of the commerce of this country, and one of the greatest advantages, the secret of the great and almost universal development of commercial and industrial enterprise, has been the flexibility and facility with which railroad men have met new conditions and have reached out after new markets, and have striven to help the localities on their lines to extend their trade. Rapidity is the secret of success in this direction, and you put a damper on all that when you say, "You must get the Commission to fix these changes;" and you will find that the new commerce will disappear and the people will forget all about it before you get the new rate fixed. This is a situation that has not been sufficiently dwelt upon, and I think that phase of the matter is one of such serious importance that it can not be dwelt upon too much. Appreciating as I have from my experience and from my connection with the railroads how these things take the time of the officers of the railroads in a single section, I believe I am perfectly correct in saying that one can not imagine the extent to which this would in a few years affect the commerce of the whole country, when these rates are made by this Commission. I do not mean that it should make them all at once, but when one is made—

Mr. STEVENS. Do you think those difficulties would apply to sparsely settled territory in new regions as well as to thickly settled territory?

Mr. HINES. I think they would be especially applicable there, because there is more new development there. Of course in old territory there are more different interests than in a new territory. These conditions perhaps offset each other. In a new territory you are making new adjustments to meet new conditions. In the old territory you are making new adjustments to meet new conflicts that are arising under old conditions. But the work is a continuing work, and is never finished.

The CHAIRMAN. The hour of our adjournment has arrived Will it suit you to go on in the morning, Mr. Hines?

Mr. HINES. Yes, sir.

Thereupon, at 12 o'clock, the committee adjourned until to-morrow, Thursday, January 19, 1905, at 10.30 o'clock a. m.

THURSDAY, *January 19, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Mr. Hines, you will proceed.

STATEMENT OF MR. WALKER B. HINES—Continued.

Mr. HINES. Yesterday I endeavored to point out to the committee a practical difficulty in the way of administering the rate-making power by any national tribunal, consisting in the fact that that tribunal would have to administer perpetually every rate or rate adjustment which it undertook to prescribe; that it was the experience of railroad people that no rate adjustment could be devised which did not when put in operation develop difficulties which had to be met, and that in the nature of things a railroad rate is a varying proposition and must be dealt with constantly in the light of existing conditions.

So that the more rates and rate adjustments the Commission undertook to make the more work it would be piling up for itself, in addition to the new work that would be coming on, and that considering the magnitude of the interstate commerce of this country and the difficulties the railroads now find in dealing with these questions it would in a short time be simply appalling—the amount of work with which the Commission would be confronted in administering the rates and rate adjustments already made.

Now, I wish to go on to one of the important economic aspects of the question. It is admitted on all hands that one of the important purposes of the proposed rate-making power is to give the Commission the right to regulate the differentials between different localities that compete and different communities that compete; that is, the prescribing of terms on which that competition shall be conducted. It has been thoroughly impressed, I think, on the gentlemen of this committee, as well as all others who have carefully studied the subject, that that competition between localities, between markets, between commodities, is the most vital and beneficial competition that can be found in this country or any country, and if it continues unabated there is a tremendous motive on the part of every railroad of the country always to increase the volume of its traffic, for that is the only way it can be sure of increasing its return or even retaining the average returns it has received in the past. So we find that railroads all along have striven, and are now striving, constantly to find new markets for the products on their lines; to find new markets for the trade centers on their lines, and to prevent any other trade centers getting ahead of those on their lines. This is the real competition that has caused the

progressive decrease in rates in this country, and it is a competition that keeps up every day in the year.

Mr. Staples very frankly said to the committee that his idea is that it is necessary for some Federal tribunal to decide these questions, and instead of allowing, for example, the railroads to the Gulf and to the Atlantic seaboard, respectively, from the grain sections of the West to strive for a division of the traffic and each one try to get as much grain traffic as it can for export, that he believes the public interest would be subserved by allowing some Federal tribunal to consider that question and to determine what the adjustments of rates should be, and consequently what traffic should go by one route and what traffic should go by another route.

It seems to me that there is a fundamental error in this proposition. It seems out of the question in a country that has developed as ours has developed, and is continuing to develop as ours is developing, to attempt to give any tribunal established by the Government the power to apportion the commerce of the country and say that this result of long rivalry between competing localities and the railroads that serve them is unwise, and that town A should have a little more favorable adjustment so it can get more of the traffic. Of course every time the tribunal decides a question of that kind, and decides in favor of the commerce of one locality, it is deciding against the commerce of another locality. It is not at all a question of deciding as against the railroads on the one hand and the public on the other, but it is a question of deciding between one portion of the public as against another portion of the public. And it seems to me simply preposterous to imagine that that would be advisable, or that there can be any necessity for such a radical departure from everything that we have regarded as safe governmental principles in this country.

Mr. TOWNSEND. May I ask you a question?

Mr. HINES. Certainly.

Mr. TOWNSEND. Is it not a fact that the question of the port differential, so called, relating to the ports of Baltimore, Philadelphia, New York, and Boston, for instance, has been a source of serious trouble with the railroads for many years?

Mr. HINES. Yes, sir.

Mr. TOWNSEND. And is it not a fact that they finally submitted voluntarily to the Interstate Commerce Commission the question to determine for them what it should be and agreed to abide by their decision?

Mr. HINES. My impression is that that is correct.

Mr. BOND. If you will pardon me—because that is in my territory—the cities themselves asked the Interstate Commerce Commission—

Mr. TOWNSEND. Did not the railroads agree to it?

Mr. BOND. The railroads said they would be very glad to have the Commission take it up.

Mr. TOWNSEND. And is it not true also that the Cotton Belt Railroad and the city of Memphis had the same difficulty and that that matter is now pending, by consent of the railroad and the other parties interested, before the Interstate Commerce Commission to determine.

Mr. HINES. I think that is correct also. But I would suggest to the committee in that connection that there is a vital distinction between a submission, by an agreement not merely of the railroads inter-

ested but of the communities interested, to a particular tribunal that suits them and that they are willing to submit it to, and the Government saying that every such question may be submitted to a tribunal established by the Government against the consent not only of the railroads but of the interests involved. Arbitration is one thing and compulsory arbitration is entirely another thing, and it does not follow because some people submit some things to arbitration that all the commerce of the country shall be submitted to the compulsory arbitration of any governmental tribunal.

The point was raised here—and I think it was made clear to the committee—that any plan of apportioning commerce through the action of the Commission necessarily involves the plan of prescribing rates, and any way you look at it, if the Commission determines this question it will say, in effect, to some railroad or some community “You must quit getting as much of this commerce as you are now getting because somebody else ought to have it.” That will be a decision in favor of one part of the public against another part of the public, and unless conditions grow very much worse even than they ever have been it seems that individual initiative should be left to work out its own solution in commercial matters.

Of course when there is a controversy between a shipper on the one hand and the railroad on the other, I recognize that it is finally established in our theory of government that the parties are not on equal terms and the railroad must be regulated; but when it is a conflict between two sections of the public it is equally a theory of our Government that those two sections of the public shall fight it out and settle it for themselves, that this is not a paternal government, that this is not a government that dispenses prosperity to one or denies it to another or tells how prosperous one shall be or how much prosperity another shall give up; and as soon as you give the government the power to prescribe the adjustment of rates between two communities you do create that dispensing power and depart fundamentally from the theories of our Government.

As I said yesterday, one of the difficulties with the commerce of this country has been that there has been more independence and going ahead and developing every part of the country than could be found anywhere else in the world. That initiative has been made possible by the fact that a railroad, when it has found that traffic could be created or extended to other points, has gone ahead and made an adjustment to help out the communities on its line. “You can not have your cake and eat it too,” and if you say the Interstate Commerce Commission shall control this initiative you necessarily take it away from the railroads and you discourage the railroads from attempting to reach out and get new traffic, because they will realize what they do in that particular instance will be applied as a precedent in some other case, and that instead of simply developing traffic in that particular case they will simply be piling up precedents that will serve to disturb some other relation and bring the matter before the Commission and have its dispensing power extended still further.

Considerable reference has been made in the last day or two to the long and short haul clause. I may properly state briefly the exact effect of the present law. The courts have held that where the conditions of competition are substantially dissimilar at the longer distance

point and the shorter distance point it is no violation of the long and short haul law for the railroad company to recognize those conditions; but the rate to the longer distance point must be no lower than is necessary to meet the competition, and the rate to the shorter distance point must be reasonable. And the railroad company is not the final arbiter of whether these conditions are similar or dissimilar. The Commission can determine it in the first place. Its finding has *prima facie* force, and then it may go to the courts to say whether the conditions are similar or not.

Mr. Burr, of Florida, cited the case of less charges on freight to Jacksonville, say from the Ohio River, than to Tallahassee. It is obvious that the conditions of Tallahassee and Jacksonville are dissimilar. Jacksonville is on the Atlantic Ocean and has water transportation, and Tallahassee has not. Therefore Jacksonville always has had a substantial advantage, and always will have, in competitive conditions over Tallahassee, which is an interior point. If the rate charged to Tallahassee from the Ohio River is unreasonably high, there is ample provision for correcting that condition under the law to-day; and if the railroads voluntarily give a lower rate to Jacksonville than the conditions justify, that can be stopped under the law to-day.

Mr. TOWNSEND. Who is going to determine under the law to-day what the conditions justify?

Mr. HINES. The Commission can. They did it in the Social Circle case, and the Supreme Court affirmed its findings. That is one of its prime duties—to determine those things and enforce their findings.

Mr. STEVENS. As the law stands to-day is it left to the railroads to determine those conditions primarily?

Mr. HINES. They are bound to determine it primarily, and will continue to do so until the fixing of rates is left to some other tribunal.

The idea seems to be on the part of Mr. Staples and Mr. Burr that there should be an ironclad long and short haul clause, with the idea that the Commission could suspend it. That is what the Interstate Commerce Commission considered at the outset of its career, and in an elaborate opinion of Judge Cooley, in which I think the entire Commission concurred, the Commission announced that the adjustment of conditions between localities which would be thrown upon the Commission by that effort to say when the long and short haul clause should be suspended would be an enormous power in a single State and would be absolutely superhuman in the United States as a whole. And it is this power that the Commission condemned in that vigorous language which these gentlemen now urge be conferred upon that Commission. There has certainly been no change in conditions which would make that wise now when it was so unwise seventeen or eighteen years ago.

On the contrary, everything has tended toward an equalization, an improvement of these conditions. They have not been wiped out, because you can not legislate commercial conditions out of existence, but there has been a constant tendency to improve in that direction. The Commission has passed on numerous cases, and has decided that those conditions were not substantially dissimilar, and the railroads have complied with the orders of the Commission and put them into effect.

Mr. STEVENS. Supposing that ruling were put into effect, what would be the condition and result of such a law in moving corn, for example, or grain from points like western Iowa and Nebraska and South Dakota and that section?

Mr. HINES. I would not undertake to make a positive statement about that territory, because I am not familiar with the conditions.

Mr. STEVENS. I am speaking of the general effect.

Mr. HINES. But I will say that in the Southeast, where I am reasonably familiar with the conditions, one or two results would come about—either that the long-haul business would have to be given up and the markets reached by that traffic would be lost or very much restricted, or the short-haul rates would have to be so reduced as to bankrupt the railroads. The consequence would be that the Interstate Commerce Commission would be compelled to suspend that law. But the Commission has power to remedy conditions under the present law, and this power to suspend that is proposed is something that I can find no foundation for in any part of the history of the traffic of this country.

Mr. ADAMSON. Referring to the case where the rate to Jacksonville was cheaper than to Tallahassee, I presume the theory is that from most of the markets of the country it is actually cheaper to go by Jacksonville than by Tallahassee?

Mr. HINES. Yes.

Mr. ADAMSON. Then would it not be practicable to arrange exceptions in a general freight bill as to those places and as to particular commodities, when it is not cheaper to go by that route?

Mr. HINES. That is what the statute does now.

Mr. ADAMSON. There may be interior places from which traffic is moved where that theory would not apply at all?

Mr. HINES. Yes; it is possible, but not probable, because the commercial status of those two places is fixed by the enormous advantage which Jacksonville has; but if it did exist, as you suggest, the law would apply to it.

Mr. ADAMSON. If there was a carload of freight originating in the interior only a few hundred miles away, it would look like the railroad was charging for service it did not perform to charge the rate to Jacksonville and back to Tallahassee.

Mr. HINES. The question would be whether the rate to Tallahassee is per se reasonable. If not, it ought to be brought to the attention of the Commission. If the rate is reasonable (to the shorter point) and the rate to the longer distance point is no lower than it should be to meet the conditions, there is no violation of the present law, and it is impossible to see how that condition can be injurious.

Mr. ADAMSON. As a lawyer right there I would like you to go on record, if you are willing, with an opinion. If the lines to Jacksonville, by water or otherwise, are carrying freight there at a rate that is profitable to them, a rate they are willing to haul it for, do you think any judgment or order would be valuable requiring them, against their consent, over their objection, to raise that rate, because some other port or some other line could not do as well?

Mr. HINES. That is an untried field in Federal constitutional law, as to what could be done under those circumstances. Of course the theory—

Mr. ADAMSON. It will never be decided until somebody offers an opinion or tries it.

Mr. HINES. Of course, the theory of all this regulation for the purpose of deciding the comparative commercial importance of localities

is on the idea that you could increase one rate and thereby diminish the importance of that place if the rate to the other place is reasonable.

Mr. ADAMSON. These are not the same lines, you understand.

Mr. HINES. I understand.

Mr. ADAMSON. But there is one line going to New Orleans and one to New York. The line to New Orleans says it can make money and do business at a certain rate that is fair and reasonable, and it objects to changing it because the conditions are such that others can not make profits on the same rates. That states it squarely. Now, is it right, and would it be legal, constitutional, against the consent of that line to order them to raise that for the benefit of some competitor?

Mr. HINES. I can not get it into my head that Congress could pass a law that would directly give New York an advantage over New Orleans in that way, and I do not see how the same thing could be accomplished by indirection by delegating the power to a commission.

Mr. STEVENS. I would like to ask a question in that connection. Judge Prouty states in one of his papers that the rate on oil from Cleveland to New Orleans was 26 cents; the rate on oil from Chicago to New Orleans was 24 cents. At Cleveland there were independent refiners who sought the southwestern market. At Chicago was the Standard Oil Company, which practically had a monopoly running over that line. The Cleveland rate was fair and reasonable. The rate from Chicago to New Orleans was unfairly low because other commodities of the same character and class had the same rate between Cleveland and New Orleans and Chicago and New Orleans. So that the comparative rates on oil between Cleveland and New Orleans and Chicago and New Orleans were unfairly low as regards Chicago and New Orleans. Now, what could be done under the present law, conceding that condition exists?

Mr. HINES. Under our present law the Commission could prevent the charging of more than a reasonable rate from Cleveland to New Orleans.

Mr. STEVENS. But it is conceded that that is a reasonable rate—that 26 cents is a reasonable rate—and the other is unreasonably low. How would you remedy that discrimination?

Mr. HINES. If some railroad that runs from Chicago to New Orleans establishes that condition, I do not see how it can be remedied, and I do not see why anybody would want to remedy it. If some railroad running from Chicago or New Orleans establishes that condition, and is willing to carry the business for a lower rate, that certainly is an advantage that Chicago ought to have,

Mr. STEVENS. Now, conceding that the article is competitive with oil—for example coal, or anything of that sort that would be competitive with oil—and that that article has the same rate between Cleveland and New Orleans and Chicago and New Orleans; the result would be then that there would be a monopoly of oil over every other competitive article and a monopoly of the Chicago market over every other market owing to those conditions. Now is not that discrimination?

Mr. HINES. If the traffic conditions are such that oil can be and is carried from Chicago to New Orleans for less than other competitive commodities are carried from Chicago to New Orleans it is entirely probable that as a matter of fact the Commission could find, and could

sustain its findings, that it would be unjust discrimination on the part of the railroad from Cleveland to charge more for oil than it does for competitive commodities from Cleveland.

Mr. STEVENS. But it is conceded that charge from Cleveland is a fair, just, and reasonable charge, not only as to oil, but competitive commodities; it is conceded that as to the other competitive commodities the charge from Chicago to New Orleans would be the same as from Cleveland. Oil is the one single exception.

Mr. HINES. If from a traffic standpoint oil may be an exception at Chicago the Commission might find that to be a basis for dealing with the carrier from Chicago to Cleveland; but if there is a railroad from Chicago to New Orleans that does not go to Cleveland and is not responsible for conditions at Cleveland, and it is willing to carry oil for less than a reasonable rate, whereas that is not true at Cleveland as to the railroads there, that is simply the advantage Chicago has. It may be that the refiners at Chicago are owned by the Standard Oil Company; but if you enforce the law against rebates it gives everybody else the same opportunity to establish a refinery there. It gives Chicago the benefit of its favorable location.

Mr. STEVENS. Right there, then, you concede that carrying oil from Chicago to New Orleans at less than a reasonable rate would be a discrimination against other competing commodities that ought to be carried at a reasonable rate and are carried at a reasonable rate?

Mr. HINES. That is on the same railroad; yes, sir.

Mr. STEVENS. How are you going to remedy that discrimination, then?

Mr. HINES. If it is on the same railroad, declare that that is an unreasonable discrimination.

Mr. STEVENS. What would you provide to equalize conditions?

Mr. HINES. Do you mean as respects Cleveland?

Mr. STEVENS. No; as respects Chicago. Supposing that competitive articles with oil were carried at a reasonable rate from Chicago to New Orleans; that oil was carried at an unreasonably low rate; how would you equalize?

Mr. HINES. The Commission could declare that that was an undue discrimination and order a discontinuance of that rate.

Mr. STEVENS. In what way?

Mr. HINES. Just that the railroad is ordered to cease and desist from charging a lower rate on oil than on other commodities.

Mr. STEVENS. And that means they have to increase the rate?

Mr. HINES. One or the other, either increase one rate or lower the other rate.

Mr. STEVENS. A condition might occur by which they would have to increase their rate?

Mr. HINES. Certainly.

Mr. STEVENS. That is what I wanted to know.

Mr. ADAMSON. If conditions are such that without dishonesty or improper purpose that rate is a profitable and desirable rate to the line that makes it and acts on it, is it really a discrimination for it to establish that rate to which its energy or nature or the situation entitles it? Would it not be just as much discrimination for a woman to be by nature prettier than other women?

Mr. HINES. I would like to make myself clear on that. What I intended to say to Mr. Stevens was this: If the A. B. railroad from

Chicago to New Orleans charges a lower rate on oil than it charges on other competitive commodities, whereas the conditions are such that the rates ought to be the same, and there is no reason why oil should be lower, that is a discrimination on the part of that railroad as between those commodities; but no matter how low a rate the A. B. railroad charges from Chicago to New Orleans on oil that is not a discrimination against Cleveland, where another rate is maintained on oil by another railroad. That is a natural or acquired advantage which Chicago has and is entitled to.

Mr. ADAMSON. Has not a man or a corporation a right to the business at any rate which it finds profitable, that it can get by certain rates?

Mr. HINES. I think it has, with this qualification, of course, in the case of a railroad, that it is a quasi public corporation, and the railroad has not quite the right to make discrimination between points on its own line and give one point an advantage at the expense of another point on its line. But if a railroad gives every point on its line an advantage over every point on another line, that is simply the natural advantage of the points on its line and is no discrimination against any other railroad, and you might as well issue an injunction against exceptional progressiveness and enterprise on the part of the Board of Trade of Chicago, so as to equalize with Cleveland, as to say that the railroad running from Chicago shall not give the shippers from Chicago any advantage over the shippers who use the railroad from Cleveland.

Mr. RICHARDSON. I will call your attention to something outside the through long haul. You are familiar with the rates of the Louisville and Nashville Railroad, are you?

Mr. HINES. Fairly so, yes; as far as I had occasion to investigate them.

Mr. RICHARDSON. Well, can you give me any reason why there should be a marked difference in the freight on a commodity from Huntsville, Ala., to New Orleans, and the rate from New Orleans back to Huntsville; is there any reason why there should be a difference in the freight charges?

Mr. HINES. Why, Judge Richardson, there are numerous reasons that might call for that. I will mention an illustration that perhaps will put it in concrete form from one standpoint. The Florida railroad commission, which has the power to make classifications, made some changes in the Louisville and Nashville classification, and it put molasses in the commodity class. The reason for that was that the stations along the Louisville and Nashville Railroad in Florida—that is, the farmers along there—made molasses and wanted to get it to market, and the commission's idea was that a low rate ought to be given to encourage that. Well, we went to the commission and explained the situation to them. We said, "The only place these people ship molasses to is Pensacola. That is their only market, and we already have commodity rates in there lower than the new rate you have prescribed, and the rates you have prescribed take molasses out of the class it has been in, the fifth or sixth class, along with other groceries. When a man ships a can of molasses from Pensacola there is no reason why that should be carried at a lower rate than coffee or sugar or rice or other things of the same class with it, which are also

moved in small quantities. Now you let molasses stay where it is as a grocery commodity and we will maintain a rate lower than you have asked us to put on molasses to market." A railroad will make a low rate on freight to allow it to find a market with the hope that it will move in large quantities, when it may properly maintain a higher rate in the opposite direction. Another thing to take into consideration is the necessity oftentimes of hauling back empty cars. In one direction the cars may be moved full of freight and in the other direction may be empty. So a railroad can often give a rate to encourage the loading of its empty cars when it could not afford to give the same rate in the direction in which its cars are already moving filled.

Mr. RICHARDSON. Do you think that difference, for the reasons you have given, should be 100 per cent?

Mr. HINES. That would depend, Mr. Richardson, on the commercial conditions. Taking molasses, if the rate on sixth-class groceries was a reasonable rate, there is no reason why molasses when carried from a wholesale house should be carried at any less rate. If a rate just half that was necessary to develop the industry of the production of molasses on that road, and it was not so low as to inflict an actual loss on the railroad company, it would be proper to make that low rate.

Mr. RICHARDSON. What do you think of this proposition: The freight charge on a horse from Huntsville to New Orleans was \$29.87. To ship the same horse back the freight charge was less than \$15. How could you explain that?

Mr. HINES. I could not without the facts.

Mr. RICHARDSON. I am giving you the facts.

Mr. HINES. I mean the reasons for those rates. Every rate has a reason, and there may have been a good reason for the difference there. On the other hand, it looks as if there was too much difference.

Mr. RICHARDSON. Don't you believe that that is too much difference?

Mr. HINES. I was going to say that if that does exist—and I know it does from your statement—and if there is no reason for it, the Interstate Commerce Commission ought to declare under the law that the rate should be the same both ways.

Mr. STEVENS. If it were called to your attention, as traffic manager of a railroad, what would you do?

Mr. HINES. Change the rate if there was no good reason for the difference. Where there are no special conditions affecting the question the rate should be equal each way. I have found from my experience in the railroad business that there are a great many things necessarily arbitrary. But generally speaking, there is nearly always some colorable reason, I believe, for all those things, and generally a good reason. Sometimes the reason may be bad and the rates ought to be changed; but they can be changed under the present law.

Mr. RICHARDSON. And you believe that when instances of that kind are called to the attention of the railroad companies that they would change them?

Mr. HINES. I think so, and if not the Commission can change them under the present law.

Mr. RICHARDSON. Where they ought to be changed.

Mr. HINES. Yes, sir. I will hurry along.

Another branch in the matter is no doubt fully agreed to by you gentlemen, which is this. That while the business of the railroad is a

quasi public function and is subject to whatever regulation is necessary to protect the public, yet the public has elected to allow railroads to be built by private capital, and has not undertaken to furnish the capital or any guaranty against the vicissitudes of commerce, and every railroad must take the risk of bad times, which are bound to come, and suffer all the losses that may occur from any cause, and certainly it is a very delicate subject when you come to reduce radically or make it possible to reduce radically the revenue that a railroad company receives.

Of course, if it receives too much it ought to be reduced, but a conservative rather than a radical method ought to be adopted. And it should be borne in mind that while a railroad might make a favorable showing in good years, that is no guaranty that it will make any showing above operating expenses in bad years, and that it is entitled to get a return in good years which will tide it over the bad years. That while unreasonable and extortionate rates can be and ought to be prevented, yet that there is no reason in the world why you should attempt to hold a railroad company down to four or five or six per cent on its actual investment in good years, because in bad years they may not get anything; and the real issue is, Is the rate extortionate and oppressive? If so, reduce it. Is it unjustly discriminatory between points on the same line? If so, stop it. But within those limits allow the railroads to share in a reasonable degree of prosperity of the times and to prepare for the times when they will have to go without any returns whatever above their operating expenses.

It is apparent from what has been said to this committee that the tendency always on the part of a rate making governmental tribunal is to reduce rates. They may have to raise them at times to preserve the adjustment between localities, but the general tendency will be to pull rates down and leave only a small margin of profits. And that will be the case in prosperous times; and when times get bad, when business falls off, everybody knows that a Government tribunal will be extremely reluctant to raise those rates. It will resolve every doubt against the railroad. The consequence is that there will be a constant downward tendency, more than is necessary to protect the public, that will in the end be a serious handicap upon the railroads in this country. It will prevent them from paying the wages that they can pay when times are good. When times are good the Commission will be pulling rates down a little, making their margin of returns narrow. Times will get bad, business will fall off, and the railroads themselves will have to reduce the rates to get any business. And then when times get good the men want more wages, materials will cost more (nobody can prevent material costing more in good times), and then there will be a situation that no Government commission can be expected to deal with.

Now, if that was the only way in the world to prevent a great public evil, of course the railroads ought to suffer that disadvantage; but if there is another way, if there is any conservative, safer ground where you can protect the public, and at the same time not put upon the railroads this constant incubus of pressing the rates down all the time with almost no hope of getting them up in the event of there being sufficient reason for their being raised, then a conservative rather than a radical method ought to be adopted.

Mr. ADAMSON. Is it not fair to assume that railroads in most instances, where they promulgate a rate, have made one satisfactory to themselves?

Mr. HINES. You must take into consideration all the conditions under which they have promulgated a rate.

Mr. ADAMSON. When you find one abnormally low it is the result of a rate war, is it not?

Mr. HINES. Generally; but a rate that is put in very low, provided it is over the actual cost of moving the business over the line, is a good thing for the public and a good thing for the railroads. It may be a temporary condition that enables the railroad to do that, and when that temporary condition is over it cuts out the rate.

Mr. ADAMSON. It is not intended for a permanent rate?

Mr. HINES. No; it is simply to meet that temporary condition. And if the power is given to a commission to fix absolutely the rates that shall be charged, there is something that the railroad always has before it to discourage its meeting special needs at special times by making reductions, because it will know that the Commission will seize hold of that rate and say that that proves that is a reasonable rate; and it will be used elsewhere; it will be a handicap upon the facility and flexibility of railroad rates now by which special needs are met by special rates. I mean that a railroad under special conditions will establish a very low rate to cope with the special commercial situation. That rate is published; it is filed with the Commission; it is open to the Commission at once to inquire, "Is this right? Is this a discrimination against anything else?" If it is wrong the Commission can stop it; but if it is not, let it go on, and then when the conditions change the railroad can take that out, and it is not erecting a standard which will be a criterion for all rates.

Mr. STEVENS. Suppose you make an abnormal rate and continue it for any purpose of your own motion, or perhaps it is done by the Commission, or in some other way. What is the effect in the course of time for furnishing facilities to the public, in the way of depot facilities, track, equipment, train facilities, and one thing and another? Does that make any difference?

Mr. HINES. The low rate of course encourages business; it is generally put in for that purpose; and then facilities have to be provided.

Mr. STEVENS. So the public would not suffer in the low rate so provided?

Mr. HINES. The railroad would suffer.

Mr. STEVENS. I supposed so; but would that have any reflex action on the public?

Mr. HINES. Necessarily it would in the long run.

Mr. STEVENS. In what way?

Mr. HINES. That is the tendency, to reduce rates. It is the tendency of every commission, and the only reason that it has not had a greater damaging effect upon the railroads is that 75 or 80 per cent of their business is interstate business, and the State commissions can not touch that. Then you do in the long run hamper the railroad and prevent them from furnishing the character of facilities and the quantity of facilities which the public would want. You do that by lowering rates.

Mr. STEVENS. Why?

Mr. HINES. It would not have the money to buy them; it would have to cut down its operating expenses; it would have to cut down everything. So the public is interested in having the railroads receive a fair or even liberal profit on their investment.

Mr. STEVENS. Could you not give them as many passenger trains as they need with the increased business which would come by reason of the lower rate?

Mr. HINES. If we made the money, it would pay for itself; but if the low rate, which does increase business, is made a criterion to make low rates in other cases where no business is brought by reason of the low rate, there would be an impairment of the railroad revenue, and it would not be able to serve the public adequately.

Mr. STEVENS. Would that impair the condition of the rolling stock and depots, and so on?

Mr. HINES. Necessarily it would. In times of depression the railroads have to diminish their expenditures for these things; they have to diminish all expenditures, they have to cut down wages. When times are good they spend more on these things and pay higher wages. They have to adjust those things to commercial necessities.

Mr. MANN. With reference to the case that was involved in the Maximum Rate case, the distance from Chicago to Atlanta is 588 miles; from Boston to Atlanta, 912 miles, or 324 miles farther. The rate on one class from Chicago to Atlanta is 71 cents (the shorter distance) and on the same class from Boston to Atlanta it is 60 cents. Now, of course, I understand that the reason of that is because of water transportation.

Mr. HINES. Yes.

Mr. MANN. But if the rate from Boston to Atlanta by rail at 60 cents for the 912 miles is profitable, should not some one have the right to say whether the railroad should require 71 cents to carry similar freight 588 miles?

Mr. HINES. The Interstate Commerce Commission has that right now. If that rate is unreasonable in itself it can declare it so and order its discontinuance.

Mr. MANN. They have the right to declare the 71 cents rate unreasonable and order its discontinuance?

Mr. HINES. Yes.

Mr. MANN. But the claim is made that that course would involve litigation to the Supreme Court of the United States, which would require several years to dispose of, and at the end of that time if the Commission was sustained the railroad might say that the rate should be 70 cents from Chicago and 59 cents from Boston, leaving the condition in discrimination exactly the same.

Mr. HINES. That claim is incorrect. I had intended to take that up a little later, but I will be very glad to take it up now, take up the status of the present law and take that case as an illustration.

Mr. LOVERING. Are those actual rates, Mr. Mann?

Mr. MANN. Yes.

Mr. LOVERING. On the same class of goods?

Mr. MANN. On the same class of goods.

Mr. HINES. Take that case as an illustration. It deals simply with the reasonableness of the rate from Chicago to Atlanta. The theory presented by the interstate-commerce act was that the courts should

prevent the continuance of unreasonably high rates. The Commission was not created as an independent tribunal to dispose of this question itself. It was simply an auxiliary to the court, to get up the information and make out a *prima facie* case. It was believed to be a valuable auxiliary. Now, if the Commission investigates that case, and finds that that rate is unreasonably high, it can enter an order that the carriers shall cease and desist from charging that rate. It can file a petition in equity in the circuit court. It can fix the time in which that order is to be obeyed, and if it is not obeyed in that time, ten or twenty days, or any other time the Commission fixes—that is my recollection—it can file a petition in the circuit court.

The expedition act, passed in 1903, provided that the Attorney-General can certify that a case under the interstate-commerce act involves a matter of public importance, and the act requires that that must be heard as soon as practicable before three circuit judges. The Elkins Act applies that provision to cases brought by the Interstate Commerce Commission. If the court believes that that rate is too high it can issue an injunction at once. It can do it in thirty days after the case is brought before it, or two months, or whatever time is possible, in view of the fact that the law says that it must be done as soon as practicable.

Mr. MANN. Right there, would that injunction order remain in force?

Mr. HINES. I was coming to that. When that injunction is issued the carrier can appeal directly to the Supreme Court. The appeal does not suspend the going into effect of the injunction. The circuit court decides that question, and if the circuit court, composed of three judges, says, "We believe that the public interest will be more subserved by suspending this injunction pending this appeal than by letting it go into effect," it seems to me that is a reasonable protection to the public. On the other hand, if the court says, "We are so clear that this is unreasonable that this injunction ought not to be suspended," it will go into effect at once, and no appeal by the carrier and no delay by the carrier can postpone for a single day the going into effect of that injunction.

Then we come to the other point. The claim is made that the railroads would make simply a technical compliance with that provision. Now, the interstate-commerce act has been in effect eighteen years, and not a single instance can be cited in that time where any railroad has undertaken to comply in that technical sense with the order of the Interstate Commerce Commission.

In reading Mr. Bacon's argument before the committee the other day I saw it stated that he would file a memorandum of cases which he understood were cases of that character. I have not seen that memorandum, but I feel perfectly safe in saying that Mr. Bacon has been misinformed on that point. I do not know of a single case, and I do not believe there is one; and from what I know of the railroad companies and from my own experience I know that when a circuit court of the United States issues an injunction and says that a certain rate is unreasonable that that necessarily carries with it some light as to what the circuit court thinks should be done in order that the law be substantially complied with, and while it has the advantage of not fixing an ironclad rate which the court must administer for the future. it leaves the railroad where it can and where it will substantially comply with that order and make a substantial reduction in the rate.

There is one other procedure I want to refer to there. In March, 1903, I think it was, or at least early in 1903, the Supreme Court held that under the Elkins Act any complaint of discrimination between localities (of course that means by a single railroad, because the present act does not undertake to keep one railroad from doing more for its communities than another railroad does for its communities), any discrimination in tariff rates between communities could be made the subject of a bill in equity in the first instance without going to the Commission at all. The Commission can make a summary investigation; that is, announce that on the face of the tariffs they are unfair. It can tell the district attorney to bring suit at once and have the investigation in the circuit court, thus saving the time necessary for an investigation by the Commission.

That is another way delay can be avoided; and I wish to say again, and to say with emphasis, that there is no case in my opinion where a circuit court would enter an injunction in a case of that sort that it would not be substantially complied with by the railroad company. Now, at any rate, a thing of that sort ought not to be left to the jury. I say that that is a conservative method of railroad regulation and when it has not been proved inefficient it is unwise to confer the rate-making authority.

Mr. MANN. I would like to ask a question on that same line. Is it your judgment as a former traffic manager and railroad attorney that if a merchant of Chicago should file a petition with the Interstate Commerce Commission, alleging that the rate from Chicago to Atlanta was too high, that the Commission on hearing would order the railroads to cease and desist from charging that rate?

Mr. HINES. It has that power.

Mr. MANN. And if that order was upheld by the court that those railroad companies would make a substantial reduction of the rate?

Mr. HINES. I am satisfied of it.

Mr. MANN. Has any such petition, so far as you know, ever been filed with the Commission since the Maximum Rate case was tried?

Mr. HINES. I am not advised of any.

Mr. TOWNSEND. That question was along the same line of a question I would like to ask. Do you claim that the Supreme Court has ever directly held, where the question was raised, that this Commission had the power to declare a rate unreasonable?

Mr. HINES. Yes.

Mr. TOWNSEND. In what case?

Mr. HINES. In the Chicago Live Stock Yards case.

Mr. TOWNSEND. Did they hold that in the Maximum Rate case?

Mr. HINES. That question was not presented there.

Mr. TOWNSEND. Did not Judge Brewer in that case specify what were the powers of the Interstate Commerce Commission?

Mr. HINES. He did not undertake to specify all of them, but he did specify numerous powers.

Mr. TOWNSEND. And he did not include this one, did he?

Mr. HINES. I do not recall that he did. He did say that they had the power to prevent unjust discriminations.

Mr. TOWNSEND. Will you tell me again what that case was?

Mr. HINES. Yes; I will explain the situation. That was the case of the Interstate Commerce Commission against the Chicago, Burlington and Quincy Railroad and other railroad companies, involving a termi-

prevent the continuance of unreasonably high rates. The Commission was not created as an independent tribunal to dispose of this question itself. It was simply an auxiliary to the court, to get up the information and make out a *prima facie* case. It was believed to be a valuable auxiliary. Now, if the Commission investigates that case, and finds that that rate is unreasonably high, it can enter an order that the carriers shall cease and desist from charging that rate. It can file a petition in equity in the circuit court. It can fix the time in which that order is to be obeyed, and if it is not obeyed in that time, ten or twenty days, or any other time the Commission fixes—that is my recollection—it can file a petition in the circuit court.

The expedition act, passed in 1903, provided that the Attorney-General can certify that a case under the interstate-commerce act involves a matter of public importance, and the act requires that that must be heard as soon as practicable before three circuit judges. The Elkins Act applies that provision to cases brought by the Interstate Commerce Commission. If the court believes that that rate is too high it can issue an injunction at once. It can do it in thirty days after the case is brought before it, or two months, or whatever time is possible, in view of the fact that the law says that it must be done as soon as practicable.

Mr. MANN. Right there, would that injunction order remain in force?

Mr. HINES. I was coming to that. When that injunction is issued the carrier can appeal directly to the Supreme Court. The appeal does not suspend the going into effect of the injunction. The circuit court decides that question, and if the circuit court, composed of three judges, says, "We believe that the public interest will be more subserved by suspending this injunction pending this appeal than by letting it go into effect," it seems to me that is a reasonable protection to the public. On the other hand, if the court says, "We are so clear that this is unreasonable that this injunction ought not to be suspended," it will go into effect at once, and no appeal by the carrier and no delay by the carrier can postpone for a single day the going into effect of that injunction.

Then we come to the other point. The claim is made that the railroads would make simply a technical compliance with that provision. Now, the interstate-commerce act has been in effect eighteen years, and not a single instance can be cited in that time where any railroad has undertaken to comply in that technical sense with the order of the Interstate Commerce Commission.

In reading Mr. Bacon's argument before the committee the other day I saw it stated that he would file a memorandum of cases which he understood were cases of that character. I have not seen that memorandum, but I feel perfectly safe in saying that Mr. Bacon has been misinformed on that point. I do not know of a single case, and I do not believe there is one; and from what I know of the railroad companies and from my own experience I know that when a circuit court of the United States issues an injunction and says that a certain rate is unreasonable that that necessarily carries with it some light as to what the circuit court thinks should be done in order that the law be substantially complied with, and while it has the advantage of not fixing an ironclad rate which the court must administer for the future, it leaves the railroad where it can and where it will substantially comply with that order and make a substantial reduction in the rate.

mission suggested in its order that \$50 a car would be a reasonable rate. The railroad company reduced the rate to \$65 a car. Now, the Commission had fully investigated that matter, had all the facts before it, and it was open to the Commission the day after the railroad company reduced that to \$65 to have a summary hearing or to bring a suit in the circuit court, without hearing, and ask for a further reduction in the rate if they did not think it was reasonable. I take it that the fact that the Commission has acquiesced in the \$65 rate is due to the belief that they could not sustain the position that the \$65 rate was unreasonable, because, if they believed they could, the way was open under the present law to do it.

Mr. MANN. Upon that point, Mr. Hines, with regard to the question of construction, is it not provided by the statute, and is it not absolutely plain, that the Interstate Commerce Commission is given the power to order a railroad company to cease and desist from charging an unreasonable rate?

Mr. HINES. That is the express language of the statute.

Mr. MANN. Is it not as plain as language can be written?

Mr. HINES. Yes. And it is made the duty of the court to enforce those orders unless they are unreasonable or unlawful. I can not escape the conclusion, gentlemen, that the power of the Commission under this rate-making grant of authority that is being discussed can not possibly be exaggerated. Their power over the earnings of the railroads and over all the capital invested in the railroads is almost absolute. The power they are given over the commerce of the country and the apportionment of that commerce is, it seems to me, absolute. And I understood from Mr. Staples, who was very frank about it, that that is what he thought there should be; that there ought to be a tribunal with that power.

In view of that tremendous power, I think it can be properly said that it would have more power than any other tribunal in this country; that it would have more power than could be imagined. And in that connection I would ask you to consider that a majority of that Commission can be appointed by every President that is in the White House for four years or, in fact, for a little over three years. A majority of them are appointed every three years. So at any time, if a President of radical tendencies should be in the White House, he could change the character of that Commission and change the whole financial and commercial situation of this country so far as railroads are concerned. Now, if that were necessary in order to prevent some overpowering abuses, perhaps the risk ought to be taken. But the point I wish to make is that it is not necessary, because no such abuses exist, and the abuses that do exist are fully susceptible of correction under the laws that exist.

Mr. RICHARDSON. Do you think that the enforcement of the present statute is in all respects sufficient to protect the interests of the public and the interests of the railroads?

Mr. HINES. There has been absolutely nothing to show it is insufficient. If there are any amendments needed to increase that efficiency along the lines of the present law, that is all right; but you have simply got that distinct line of cleavage before you. Here is one method of corrective regulation by which you can substantially prevent any oppressive or unjust action on the part of the railroad and at

nal charge at Chicago on live stock from the Southwest. The Commission held that that rate was unreasonably high and ordered the carriers to cease and desist from charging it. The point was made on demurrer that the Commission did not have that power, that that was in fact making a rate indirectly for the future. The circuit court overruled that demurrer and held that the Commission did have that power. On final hearing in the circuit court the circuit court held, on the facts presented, that the rate was reasonable.

The case went to the circuit court of appeals and was affirmed on the facts. It then went to the Supreme Court of the United States, where it was thoroughly argued, and the court pointed out that the Commission had held the terminal charge unreasonable because it was added to the rate previously in effect, which had theretofore covered the terminal service, and was presumptively reasonable compensation for the transportation, including the terminal service; that the Commission had justified itself on that ground, that it was an addition to a reasonable rate already in effect without any addition to the service; and it appeared that after that order was made it had been made to appear to the Commission that on a very large part of that traffic there had been a reduction on the through rates of about \$16 per car, and the Commission had refused to modify its order, holding the \$2 terminal charge unreasonable.

Now, the court said that the Commission reached its conclusion only on the ground that the through rate was reasonably high and included the terminal charge; so that theory clearly could not apply where there had been a reduction in the through rate, much greater reduction than the \$2 terminal charge amounted to; and it reversed the case, not because the Commission did not have power to make an order to cease charging an unreasonable rate, but because of the refusal of the Commission to consider those material facts. However the court reversed the case with the power to reopen it and make an order based on those facts; and the Commission has that case before it now.

So, I say, that case establishes the proposition that the Commission has the power to order the discontinuance of a rate that is said to be unreasonably high.

Mr. TOWNSEND. Where is that case?

Mr. HINES. The Interstate Commerce Commission against the Chicago, Burlington and Quincy Railroad.

Mr. BOND. 186 U. S., 330.

Mr. HINES. That is the Supreme Court report.

Mr. BOND. Yes.

Mr. HINES. I was looking for reference in the Federal Reporter.

Mr. BOND. 98 Federal, 173.

Mr. HINES. Yes; that is the one in the Federal Reporter.

Mr. MANN. They have exercised that power in a few recent cases, have they not?

Mr. HINES. The Commission has exercised that in a number of cases, and in a number of them it has been substantially complied with.

Mr. MANN. There has been a case in the past year, the case of the rate of fruit from New York to Chicago, fruit coming from the South.

Mr. HINES. Yes, sir. It was exercised in that case, and I wish to refer to that case. The Commission there held that the rate from New York to Boston on peaches was unreasonably high and ordered the discontinuance of that rate. The rate was \$80 a car. The Com-

Atlanta should be \$1. That would have pulled down the rate from every point on the Ohio River to Atlanta and every other basing point in the South, and would have made a reduction of 7 cents on all traffic moving from the Ohio River to basing points in the Southeast.

One witness expressed the opinion that a rate of \$1.01 would be proper; a good many railroads in the South were in the hands of receivers and unable to pay fixed charges, and yet that reduction to \$1 was made. And in the Maximum Rate case very substantial representations were made by southern railroads that it would bankrupt them to have to put those rates into effect.

Mr. RICHARDSON. Who were the Commissioners?

Mr. HINES. I do not know.

Now, going to another point. In its last annual report the Interstate Commerce Commission points out that it is proper for it to exercise its rate-making power, because the proceeding in which it would do it is essentially judicial. It says there must be complaint and notice and full hearing. I wish to point out to the committee, with all due respect to the Commission, that while the form and character of the proceeding may be judicial the form and character of the tribunal is not judicial. The Interstate Commerce Commission is charged with a great many important duties that are utterly inconsistent with the exercise of any judicial function. It is its duty to seek out and prosecute for every violation of the Elkins Act or any other secret concession from a rate.

It necessarily, in that respect, must occupy the attitude of a detective and a prosecutor. It is perfectly proper for it to do it. It is its express statutory duty to do it. It has to perform such duties in respect to safety appliances on railroads through its detectives or inspectors who are traveling all over the United States and searching out violations of that law, and where car couplers do not come up to the requirements of the act, and where trains are not equipped with air brakes so as to comply with the act, it is its duty to institute prosecutions against the railroads. That is entirely within the statute requirements, and somebody has to do it.

There is no complaint that that is not a proper exercise of the duty of the Commission. We find them having monthly accident reports from the railroad companies all over the United States which enable them to say what the cause of the accident was, to see if the railroads were in fault, and to see how the matter can be corrected, and of course a great deal of very valuable information is gotten together in that way. We find it instituting complaints before itself; and that is proper. It is supposed to represent the shippers. That is what it was created for. It institutes these complaints and is avowedly the shippers' champion in these matters. The idea is that the interest of any particular shipper is so small as compared with the railroad interests on the other side that the shipper needs the aid of a Government tribunal to assist him in his case against the railroad company. Nobody denies the propriety of that.

But the point that I make is that a tribunal properly charged with detecting violations of the rebate law and prosecuting those violations, and detecting violations of the safety-appliance law and prosecuting on them, and charged with the duty of scrutinizing all the railroad accidents in the country and supervising those matters, and calling attention to all cases of improper management on the part of rail-

the same time leave a reasonable degree of initiative and the management of railroad affairs for the future with the railroads. With the other you have a system of affirmative regulation for all time to come of every rate that the Commission takes hold of.

Now, if there is anything that can be done to increase the corrective power under the present theory, of course there can be no dispute as to the propriety of that, because that theory of regulation has been fully adopted by Congress. But the question before the committee now is whether that theory will be thrown aside and the theory of affirmative management of railroad properties adopted in its stead.

Mr. RICHARDSON. The real question now, as I understand, is to give the Commission effectiveness—that is, to give it power to enforce legislation that already exists.

Mr. HINES. That can be done. That is already provided for in the present law.

Mr. TOWNSEND. You have shown that you have made a careful study of this and I ask this question for information. The Commission during the first years of its existence exercised the right of rate making. The first order or two it made were with reference to the establishment of a rate, were they not?

Mr. HINES. It made a good many rates.

Mr. TOWNSEND. During that time can you recall any instances where the Commission abused that right and brought about any conditions of which you are complaining now?

Mr. HINES. I think it will be found on investigation that certain rates the Commission made were not observed by the carriers because they did not believe the Commission had the power, and the Commission did not take it to court.

Mr. TOWNSEND. Was that ever questioned in any court trial up to the Maximum Rate case?

Mr. HINES. It was questioned in a good many court trials before that. In a case against the Lehigh Valley Railroad, in 1891, and in a case against the Louisville and Nashville Railroad, in 1893, the point was made.

Mr. TOWNSEND. And how was it disposed of?

Mr. HINES. In favor of the railroad in the Louisville and Nashville case, in 1893. That went to the court of appeals and was affirmed. That was the Social Circle case. Then it went to the Supreme Court and was affirmed in 1896. Some sweeping orders were made with which the railroad did not comply. My information is that in 1890 the Commission issued an order reducing the rates on grain to eastern points. My information is that that order was not complied with, and the Commission did not file any proceedings to compel compliance. That was in 1890.

Now, coming more directly to an answer to your question, I say this was rather a progressive thing, naturally. Take a tribunal, assuming that it has this power, it has a disposition to start out cautiously, especially when the power is not directly granted by the statute. I say that that Social Circle case was an abuse of that power. The Commission held on the testimony of a single witness, who said that a rate of \$1.01 would be a reasonable rate from Cincinnati to Atlanta, that instead of \$1.07, the existing rate, that the rate should be reduced to \$1; and it made an order that the first class from Cincinnati to

when they have these other functions to perform which are so incompatible with the judicial functions.

Mr. ADAMSON. You think the judicial functions ought to be disassociated from the operations of inspection and prosecution?

Mr. HINES. Yes; and I think anything that requires a judicial attitude ought to be disassociated from these other duties. They are all important duties, and it is inconceivable to me how they can be centered in one person without interfering with the judicial attitude which the case requires.

Mr. RICHARDSON. Do you think that the interstate court—the judicial court, I mean—should be clothed with the power to say absolutely and unqualifiedly what a rate should be?

Mr. HINES. No, sir. My idea is that at least until the present law is found inadequate there should be no tribunal erected to make and regulate the railroad rates of this country.

I say that the law now in force should be enforced, and I think it would be adequate. I do not mean that ideal conditions would be produced, because no condition is perfect, but I mean that there would be a substantial correction of every traffic abuse that exists as far as any law of any sort can be enforced.

Mr. RICHARDSON. As I understand your answer, it is based on the idea that a judicial body, a court, ought not to be clothed with the legislative authority.

Mr. HINES. I do not think you can clothe a court with legislative authority. You might call it a court, but it would not be a court; in the nature of the case it would not be. It might be constituted as a court, but it would not be if it had legislative authority. I say that the Commission plan calls, and the Commission recognizes that it calls, for the judicial attitude, and that that can not be expected where these other functions are combined with it.

The CHAIRMAN. If you can finish in the morning, Mr. Hines, we will let you occupy twenty minutes in the morning.

Mr. HINES. Very well, Mr. Chairman.

(Thereupon the committee adjourned until to-morrow, Friday, January 20, 1905, at 10.30 o'clock a. m.)

ACTION ON THE INTERSTATE-COMMERCE LAW BY THE NATIONAL BOARD OF TRADE,
JANUARY 18, 1905.

The National Board of Trade, believing that the interests of the people demand not only that rates of transportation should be reasonable and that there should be no unjust discriminations or preferences, but also that there should be a more effective governmental supervision of all transportation agencies, expresses the earnest hope that Congress will in its wisdom, and as speedily as possible, enact such legislation as will with justice to all interests concerned secure a more speedy and more effectual correction of any abuses in transportation methods or operations which may, upon due inquiry, be found to exist, and to that end that power be given to the Interstate Commerce Commission to revise any rates found to be unreasonable or discriminating; the revised rates not to go into effect until the action of the Commission shall have been, upon review, confirmed by the circuit court of the United States of competent jurisdiction.

Resolved, That the National Board of Trade earnestly advocates legislation by Congress to amend the interstate-commerce law so as to permit reasonable traffic agreements by railroads, under the supervision and control of the Interstate Commerce

ads, and acting as the champions of the shippers, and appearing as a party complainant with the shipper, and appearing as the attorney of the shipper, has not a single vestige of the judicial character about it. It is no reflection upon the court or on the gentlemen who compose the Commission. It is simply putting into effect the principles of republican government that any body who exercises those functions is not to be judicial.

Judge Crump, from Virginia, of the Virginia Railroad Commission, very frankly stated to you yesterday how his commission was organized. They had to make a new constitution in Virginia to do that. It is as the constitutional privilege of exercising the legislative, judicial, and executive powers. Judge Crump, for whom I have the highest respect, said to you that he thought that was proper. He was very frank about it. Of course if that is proper it means that the principles of republican government, on which this country has been conducted, need revision.

Now, it has always been said that a benevolent despotism is the best form of government, and I am sure that Judge Crump is a very benevolent despot; but the point I make is that it is improper to provide for a tribunal of that sort, and to give to it these inquisitorial and prosecuting duties, and to give to it also any duty that calls for a judicial proceeding or calls for the judicial temperament. The Commission recognizes the propriety of the judicial attitude toward these things by making that an argument; and I say with all respect that no tribunal could be imagined that could be further from being judicial in its form than the Interstate Commerce Commission, charged as it is with these other duties so important to the Government, and which need such vigilant, unrelenting attention to secure their full enforcement against the railroad companies.

Mr. TOWNSEND. You favor the establishment of a special court?

Mr. HINES. I say that if anything of this sort is established it certainly should not be vested in a body that has these functions. It ought to be a separate tribunal and not charged with any of these functions.

Mr. RICHARDSON. Is your argument along the line that the railroads themselves ought to have the entire power of making rates?

Mr. HINES. No, sir; they ought to be regulated. I say they ought to be regulated.

Mr. RICHARDSON. By whom?

Mr. HINES. By the Government. They can be regulated now by the courts at the instance of the Interstate Commerce Commission.

Mr. RICHARDSON. By act of Congress, or by the courts, or by the Commission?

Mr. HINES. I say they can be regulated now.

Mr. RICHARDSON. I am asking you for your idea. You are very well informed about it. Should it be by act of Congress, or by the Commission, or by a court?

Mr. HINES. You have necessarily to have an act of Congress, of course. They can not be regulated by an act that will apply to all conditions. You have to make a law and then provide a tribunal to enforce the law. My idea is that these duties of the Commission are proper; they ought to hunt out these violations and then enforce the law, but they ought not to do that themselves, and it ought not to be assumed that they are capable of discharging these judicial functions

does ordain that specific thing, the courts can not review the reasonableness of that thing, because it is the legislature itself that has determined that that thing is reasonable in authorizing the municipality to do it.

But when the legislature delegates in general terms a power to a municipality not to do a specific thing but to do generally things in the discretion of the council, then the courts do consider the reasonableness of the ordinances that are passed. I had a copy made of section 328 of Dillon's Municipal Corporation, fourth edition, and the latter part of that section reads as follows:

What the legislature distinctly says may be done can not be set aside by the courts because they may deem it to be unreasonable or against sound policy. But where the power to legislate on a given subject is conferred, and the mode of its exercise is not prescribed, then the ordinance passed in pursuance thereof must be a reasonable exercise of the power or it will be pronounced invalid.

That is on the city council. I simply suggest that as an analogy that may be of some assistance to the committee, and it does show that in some instances courts do undertake to consider the reasonableness of legislative action by a subordinate tribunal, although they do not undertake to consider the reasonableness of legislative action by the supreme legislative body itself.

Now, it is mere speculation to say to what extent, if at all, the courts of the United States would apply that rule to the judicial review of the reasonableness of an act of a commission in fixing a rate for the future. But I suggest that analogy for what it is worth in view of the fact that there is so much uncertainty as to what the court could or would do in that direction. I suggest that in the event any rate-making power is conferred, certainly the courts ought to be given expressly the power to review that part of the proceeding which is essentially judicial and concerning which the courts can undoubtedly exercise a power of review, and that is to review the decisions of the rate-making tribunal upon the preliminary question whether the rate or adjustment complained of is reasonable or unreasonable.

That is a jurisdictional question and can properly be submitted to the court for consideration, and undoubtedly ought to be so submitted in view of the grave doubt as to the extent to which the courts would feel authorized to exercise a power of judicial review as to the reasonableness of a rate fixed for the future.

There is a practical question involved here. All the gentlemen of the committee doubtless fully appreciate that the courts are extremely reluctant to interfere with the findings of tribunals on questions of fact. Whether an existing rate is unreasonable or whether a rate is reasonable for the future is unquestionably a question of fact. Courts do not overturn the findings of juries on questions of fact except in cases of gross palpable mistake on the part of the jury.

Courts of equity, when matters have been referred to a referee for investigation and report on the facts, do not overturn those findings without the clearest evidence of mistake. If the Congress shall declare that any tribunal is a proper tribunal to decide whether an existing railroad rate is unreasonable and what shall be the reasonable rate for the future, thereby showing the confidence of Congress in the ability of that tribunal to pass correctly on that delegated question of fact, clearly the courts by analogy to those principles that I have referred

ommission, to the end that unjust discrimination may be prevented and reasonable, uniform, and stable rates be established.

Resolved, That the act to regulate interstate commerce be amended, to wit, that private car lines and terminal or originating railroads engaged in interstate commerce be considered as common carriers and subject to the interstate-commerce act.

(The above was submitted by the chairman for the record January 9, 1905.)

FRIDAY, *January 20, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF WALKER B. HINES, ESQ.—Continued.

The CHAIRMAN. Mr. Hines, will you proceed? It has been suggested by Mr. Hines and by one or two other gentlemen that they would be glad if interruptions would not be made during their statements, but that the members should make notes of whatever they desire to inquire about and at the conclusion of a statement to make those inquiries. Of course I do not want to dictate to any member of the committee, but it is thought expedition might be secured if we adopt that plan.

Mr. HINES. Mr. Chairman and gentlemen of the committee, I propose to devote the brief time allotted to me this morning to a discussion of the judicial review that is practicable and proper in the event any rate-making power is conferred upon any tribunal. The exercise of a rate-making power by any tribunal will involve two steps. The first is essentially judicial and is the decision whether or not the rate or rate adjustment complained of is unjust or unjustly discriminatory. A decision as to whether an existing condition is reasonable or unreasonable is in its nature judicial and has been so recognized by all the courts.

The second step in this exercise of the rate-making power is, when the existing rate or adjustment has been found unreasonable, the fixing of a rate for the future. The Federal courts have gone no further in clearing up the law on that point than to hold that that is a legislative and not a judicial act. The Federal courts have not thrown any light on how far the courts can consider on review the reasonableness of a legislative act. Of course difficulties in the way of an adequate review of that question are obvious, and, I think, have been frequently suggested to the committee.

Now, what the Federal courts will hold as to the extent of that review is of course a matter of speculation, and I do not find in the Federal decisions anything that affords a satisfactory basis for a reasonable prophecy on that point. I wish to suggest this idea, however, for the consideration of the committee. There are undoubtedly instances in which courts do pass on the reasonableness of legislative acts. A familiar illustration of that is when a court considers the reasonableness of an ordinance of a city council. The doctrine on that point seems to be that where the legislature has expressly authorized the municipality to do by ordinance a specific thing, and the city council

tion to those questions, it seems to me is utterly inconsistent with everything that is fair and just in a free government.

Moreover, it is not merely the direct loss which the railroad company would suffer pending a judicial consideration of the question. Other rates would be involved which are not directly affected by the order, and there would be direct losses to them. And in addition to that, pending this judicial review, commercial conditions would adjust themselves to the new rate put into effect, and after that judicial review had taken place it might be impossible, even though the courts decided that the Commission was wrong throughout, for the railroads as a practical matter to restore the status that existed before the Commission decided that that old rate was unreasonable, and thereupon took the rate-making power out of the hands of the railroad company. And this is a matter which is not only of vital importance to the railroads, but it is of vital importance to communities.

If the relative commercial importance of communities is to be fixed by the orders of this Commission, they are vitally interested in having the matter judicially determined before a decree is put into effect which may for all time affect their relative commercial status, no matter what the court may afterwards decide upon it. The time for the judicial review is when that judicial review will be undoubtedly effective, and the time for due process of law is before and not after execution. The latest expression on the part of any commercial body that has come to my attention on this question is the expression of the National Board of Trade which was given in this city a day or two ago after a full discussion of both sides, and that board then adopted a resolution that the rates made by the Commission ought not to go into effect until after a judicial review.

Those are the only two points that I will undertake to cover, in view of the brief time that I have. I feel that I have already trespassed too long on the time of the committee and trespassed too much on the time of other gentlemen who desire to be heard.

Mr. TOWNSEND. I would like to ask you one question. I do not know what you said before I came in, but you claim that if a review is to be had by the court of the rate it should also have power to determine the reasonableness of a rate as found by the Commission. Have you thought anything about the question as to whether the court, if one is established, should have the power to determine a rate other than that fixed by the Commission or that stated in the tariff schedule of the road?

Mr. HINES. I believe that question is probably disposed of by the decision of the Supreme Court in the maximum rate case, where they held that fixing a rate for the future was a legislative function. Now, any modified rate which the court would fix for the future would be fixed by the exercise of a judicial function, and I am afraid that the court would hold that a court could not exercise that power.

Mr. MANN. On the question of the review of the action of the Commission by the court, suppose we enact a law providing a method of review as set out in the law, is it your judgment that the companies affected would be obliged to follow that method or would they have the right to file the ordinary bill in equity asking for an injunction on the ground that the rates complained of were in violation of the Constitution of the United States?

to as obtaining in regard to common law in equity courts, and in deference to the views of Congress, will not attempt to interfere with the decisions of that tribunal unless such decisions are clearly, and I might say palpably, incorrect.

Some of the questions involved are of the most complicated character, and the courts always are reluctant to take upon themselves the heavy burden of going through a vast mass of detail for the purpose of finding that a tribunal specially selected for deciding the facts has decided those facts improperly. So that there is a practical difficulty in the way of any judicial review that may be adopted, and the probability is that every doubt will be resolved in favor of the finding of the tribunal primarily authorized and required to make a finding. The necessity for a judicial review of any rate made by any rate-making tribunal has, I think, been recognized throughout all the discussion that has taken place on the question.

Nobody has suggested that any commission ought to make rates which could not be judicially reviewed. That being true, it would seem necessarily to follow that in view of the doubts concerning any judicial review that can be provided Congress ought to make it just as full as possible, and when it has done that, even then every doubt is going to be resolved in favor of the rate-making tribunal. To make it as full as possible it seems to me it is absolutely necessary to provide that the court shall review the jurisdictional question whether the rate complained of is reasonable or unreasonable, for that is the only essentially judicial question in the proceeding. It is absolutely certain that the court can review, although even then it will resolve every doubt in favor of the finding of the lower tribunal.

The remaining question to be considered is as to whether it shall be considered before or after the execution of the finding of the tribunal. It would seem at first blush that to state that question was to answer it: that in a country where due process of law is the corner stone of the government, it would not be necessary to ask the question whether the decision shall be put into effect before or after a judicial consideration of it. But it has been urgently insisted that the decision of this rate-making tribunal should go into effect at once and let the judicial review take place afterwards. In its essence that is obnoxious to the principles of the government that seeks to accomplish due process of law. It is particularly obnoxious in this case because, as I pointed out yesterday, the present Commission, or any tribunal that is likely to be given the rate-making power, is so constituted and has such duties imposed on it that it is essentially a nonjudicial tribunal and exercises functions which make it almost impossible to assume a judicial attitude. Without enumerating those functions in detail, it is sufficient to say again that the Commission acts as detective, prosecutor, plaintiff, attorney for the plaintiff, and is throughout regarded as the champion of the shippers.

Now, to say that a commission so constituted shall determine the preliminary question, which is essentially judicial, that a rate complained of is unreasonable, and upon that determination shall take the power to fix a rate for that service out of the hands of the railroad company and substitute therefor a rate made by the commission itself, and that that determination shall be put into execution before there is any opportunity for any real court to give a judicial considera-

ten, twenty, or thirty days it could make a new order and institute proceedings on that, and follow precisely the procedure outlined in the old bill with practically no delay, and secure the discontinuance of the new rate.

Mr. STEVENS. I do not know whether the question was asked before I came in on the question of the power of the court to fix a rate for the future. Supposing that a bill something like one of these pending before the committee was passed and a rate of 12 cents a hundred was in existence between two points and complaint was made of that rate by the shipper and reparation was demanded for unjust charges and a hearing was had and a rate of 8 cents was fixed by the Commission and an order for reparation made. Then suppose the railroad, feeling itself aggrieved, took proceedings for review before the court, and the court adjudged that 8 cents was too low and that 10 cents a hundred was a just and reasonable rate, and made an order for its establishment, would the court, in that same proceeding, if the petition of complaint was broad enough, also give an injunction against the continuance of any rate over and above 10 cents?

Mr. HINES. I am afraid that the decision of the Supreme Court in the Maximum Rate case would be in the way and it would result that fixing the rate at 10 cents for the future would be decided to be a legislative function which the court would not exercise.

Mr. STEVENS. The court of review held that 10 cents was a just and reasonable rate, as shown by that litigation in that case.

Now, would not the court, if the papers and proof authorized it, issue a mandatory process against charging more than a reasonable rate?

Mr. HINES. It might issue a general injunction against anyone charging more than a reasonable rate.

Mr. STEVENS. If it found 10 cents was a reasonable rate and ordered reparation on that basis, would not that fix 10 cents as the reasonable rate?

Mr. HINES. I am afraid it would not. I am afraid that point was pretty prominently involved in the Maximum Rate case, and that could not be done by a court.

Mr. MANN. That is, that the court would not say that a rate to-day of 10 cents would necessarily be a reasonable rate to-morrow?

Mr. HINES. I think that is practically decided in the maximum-rate case.

Mr. STEVENS. It would hold that 10 cents was a reasonable rate between those parties in those circumstances?

Mr. MANN. That is, after to-day?

Mr. STEVENS. Yes, sir; that is shown in the occasion for which this legislation arises, of course. But this is a continuing rate and it includes a continuing wrong, and can not the court guard against a continuance of that wrong, and prevent a multiplicity of actions by an injunction against that wrong?

Mr. HINES. If it does that, it seems to me that it is making a rate for the future.

Mr. STEVENS. It does not make a rate for the future; it enjoins against a wrong that has existed.

Mr. HINES. If it enjoins against the charging of more than 10 cents, it seems to me that is fixing 10 cents as the maximum rate for the future.

Mr. MANN. Do you think there is any doubt about our power—the

Mr. HINES. I have not given that question mature consideration, because it has not before been presented to me. My offhand suggestion is that the courts would be inclined to say that the provision for review in the law was conclusive.

Mr. RICHARDSON. Has not the Supreme Court of the United States, in reference to where such commissions placed a rate too high or so high that there was not a fair profit on the property of the railroad or its investments, and so forth—the equipment, and so forth—invariably held where such a rate as that was fixed that it was confiscatory and that they would set it aside?

Mr. HINES. The only cases that have arisen that the Supreme Court has passed upon are cases where the rates fixed by the State commission did not yield enough to pay operating expenses.

Mr. RICHARDSON. Well?

Mr. HINES. Now, how far the court would go in determining what margin of profit would be allowed is of course speculative. They say that a fair margin of profit ought to be allowed.

Mr. RICHARDSON. Did not the court in doing that exercise its judgment as to whether the rate was reasonable or unreasonable?

Mr. HINES. It did to that extent.

Mr. RICHARDSON. Yes.

Mr. HINES. As to whether it was so unreasonable as to confiscate the company's profit.

Mr. WANGER. I understood you to say yesterday, that where the Commission found a certain rate to be unjust and unreasonable, and enjoined the railway company to desist from charging that particular rate, and also suggested what the just and reasonable rate ought to be, that if the carrier reduced the rate from what it was charging, but did not get down to the rate suggested by the Commission, the Commission might go into the circuit court and ask for an injunction to restrain the company from collecting the new rate which it had fixed. Did I understand you correctly?

Mr. HINES. Yes, sir; that was my statement of the law.

Mr. WANGER. Under what section of the act is that power conferred?

Mr. HINES. Under the Elkins law the Commission has the power to request the district attorney to bring a suit in the circuit court in the first instance to enjoin any form of discrimination, not merely a discrimination by giving a secret rebate, but a discrimination between tariff rates. That was decided by the Supreme Court in March or April, 1903, in the case of the Missouri Pacific Railroad Company against the Commission.

Now, any injustice in rates can undoubtedly be established on a relative basis. That is, if the adjustment is unjust, it can be established as an unjust discrimination between that commodity and some other commodity or between that locality and some other locality. Therefore, in my opinion, in any such case the Commission can exercise the power which is given by the Elkins law to go direct into court and seek to enjoin the continuance of that discrimination.

In addition to that, in any case where the Commission has had a hearing and has decided that an existing rate is unreasonable, and has ordered its discontinuance, and the carrier has reduced the rate, but not to the point which the Commission has fixed, then as the Commission has already all the facts, it could have a summary hearing, and in

legislative power—to say that when the court ascertains that 10 cents is a reasonable rate to-day, that rate shall be a reasonable rate for a certain time in the future, and to direct the court to fix it?

Mr. HINES. That is a new aspect of the matter that has not been presented to the Supreme Court. It seems to me that there is a reasonable basis for a distinction there; that it is in the power of the legislature to declare that a rate that is reasonable to-day shall not be exceeded for a specific length of time, and that the legislative act there would be by virtue of an act of Congress and not necessarily by virtue of a decision of the court. I think there is room for a distinction there. I have not had opportunity to think that over, but I do not think that question is foreclosed by the maximum-rate case.

Mr. TOWNSEND. You and Mr. Spencer both have claimed, as I understand you, that if the railroads sustain a loss during the lean years, or during depressed years, they would have a right to recoup damages for that loss, or to recover that loss by extra charges thereafter or during prosperous years. Am I correct about that?

Mr. HINES. I do not claim that the railroad company has an absolute right of that sort, and it certainly has no right to prepare for lean years by charging unreasonably high rates in prosperous years. But I say that the fact that a railroad company makes a reasonably large or considerable return on its investment in prosperous years is no reason why its return for those years should be reduced, provided its rates are reasonable and not extortionate, and there is a very strong, practical reason for that, which arises out of common justice, that a railroad company which has to take all the risks for lean years should be allowed to make as large profits in the prosperous years as can be done by charging just rates.

Mr. TOWNSEND. On what are you going to figure the profits—on the actual capitalization of the road?

Mr. HINES. The Supreme Court of the United States has held that the actual present fair value of a property is the basis for a consideration of these questions.

Mr. TOWNSEND. In the case of the Southern Railway Company, that was mentioned by Mr. Spencer, that system is composed of a number of roads that were bankrupt, which were absorbed by this system when they were in a bankrupt condition, resulting from the depressed conditions of trade during the lean years, as we call them. Now, do you maintain that the people should allow the Southern Railroad system to recover its losses based on the original capitalization of those bankrupt companies?

Mr. HINES. I do not know anything about the facts of that particular case, but I do not maintain that rates must be high enough to pay a profit necessarily on the original capitalization. The Supreme Court has held that that is a question that is entitled to fair consideration under the facts of each case.

Mr. TOWNSEND. This loss that was sustained by the railroads during these years was not the only loss that was sustained. The people generally who patronized the railroads sustained losses during those same years?

Mr. HINES. Yes, sir; but the people get the chance to make that up in the prosperous years, and my contention is that the railroads ought to have, within fair limitations, the same chance.

Mr. TOWNSEND. They would not have a chance to make that up from the railroads if the railroads were to increase their rates for transportation?

Mr. HINES. I do not think that follows. If you will allow me to give an illustration I would like to do so. Take the production of iron. The rate on iron moves up or down with some relation to the price of iron. During the depression in the iron business, about 1895, 1896, and 1897, the rate on pig iron from Birmingham, Ala., to Louisville, Ky., which is the base rate, was reduced to \$2 a ton, which was the lowest rate in its history. The iron business began to improve by leaps and bounds, I think, about 1899. That rate was then raised to \$2.50, which was the standard rate. Then iron went up to a phenomenal price, and the ironmasters were making tremendous profits. Every steel rail that the railroad companies were buying was costing a great deal more than it was in the previous years, and all sorts of materials into which iron entered were costing the railroads more.

They then raised the rate from Birmingham, Ala., to Louisville, Ky., to \$3. That did not prevent the ironmasters from making an enormous profit. That gave the railroads a slight share in the great prosperity. As soon as the iron business began to get slack again and iron went down, that rate went down to \$2.50 a ton, which is the standard basis, and if any severe depression should come it would probably fall to \$2; and if the railroads increase rates to a reasonable degree in times of unusual prosperity, such an increase does not absorb any great part of the profit the people make in those times. It is simply sharing, in a very modest manner, in the profits the people make in those prosperous times.

Mr. RICHARDSON. It seems to me, and it struck me more forcibly than any other part of your statement, from the answer you made to Mr. Mann's question asked a few moments ago, and I want to understand you fully on that subject if I can. Your answer to that question involved this idea, that the Maximum Rate case tended to show that the Supreme Court would not fix a rate for the future, but that the hypothesis which Mr. Mann made presented a new view, and a doubtful one, and he thought possibly it might get rid of that view of the Supreme Court for fixing a rate for the future. Give me, if you please, as far as you can—and I know you can do it fully, on this matter of the hypothesis presented by Mr. Mann, and the view of the Supreme Court heretofore as to fixing a maximum rate—or rather a rate for the future.

Mr. HINES. I have not had occasion to consider that point until the suggestion was made this morning, but the distinction, it strikes me, is this. If an act is passed which says in general terms that the court shall fix what it terms a reasonable rate for transportation by rail, then the Maximum Rate case comes in and says that fixing that rate for the future is a legislative function which it can not exercise.

Mr. RICHARDSON. If Congress should pass an act saying that whatever rate the revising court fixed should be the rate and stand as the rate, that, you think, would get rid of the difficulty of the court acting in a legislative capacity?

Mr. HINES. Yes, sir; I think that. The Maximum Rate case establishes the fact that the determination of what is a reasonable rate to-day is a judicial question.

Mr. RICHARDSON. Would not that encounter this objection, that whatever could not be done directly could not be done indirectly?

Mr. HINES. That is an entirely different question, I think, Judge Richardson. The difference impresses me in this way. It seems to me that it is entirely competent for Congress to declare, subject, of course, to the limitation that it should not result in confiscation of property, but only subject to that limitation, that the existing rates in this country to-day shall not be exceeded for twelve months. That would be a legislative act. Now, it seems to me, if Congress can do that, it can say that the existing reasonable rates in force to-day shall not be exceeded for twelve months, and leave it to the courts to determine the essentially judicial question, what is the existing reasonable rate to-day.

Mr. ADAMSON. Then if Congress enacts that a rate adjudged by a court to be a reasonable rate shall remain the rate, it will not be obnoxious to the theory that it is vesting the one tribunal with the double authority, legislative and judicial?

Mr. HINES. Offhand, that is my opinion. As I say, I never had occasion to consider that question until this morning, but it seems to me that makes a distinction.

The following was submitted for the record by Mr. Adamson January 19, 1905:

NEW YORK, N. Y., January 16, 1905.

HON. W. C. ADAMSON,
Member of Congress, Washington, D. C.

MY DEAR SIR: Referring to my conversation with you on Saturday last, at which time you furnished me copy of the "Hearing before the Committee on Interstate and Foreign Commerce of the House of Representatives on January 9 and 10, 1905," I note with particular interest the testimony in regard to the peach shipments from Georgia.

A large majority of the peaches forwarded from the Southern States originate on the lines of the Central of Georgia Railway, and during my connection with that company, as vice president and president from the latter part of 1896 to the last month of 1903, nothing was left undone by myself or other officials of the company to foster and encourage the peach industry in Georgia and Alabama.

The peaches shipped from that section and the orchards containing millions of trees that were planted along the lines of that railway will bear testimony as to what was accomplished during that period.

The difficulties encountered in shipping the crop of 1896 was detailed to me by the operating officials, and it was decided after an exhaustive study of the situation, at which time the views and suggestions of the principal growers were obtained, that it was to their interest as well as from the railway standpoint that an agreement should be made with a company who would guarantee the furnishing of the proper cars, including labor and ice, and see that each and every car was properly attended to, not only at the originating point, but at certain intermediate stations up to its point of destination.

The Armour Car Lines were selected, and at all times performed their part of the agreement with satisfaction.

During certain years, owing to shipments exceeding the estimates, they were obliged to transport ice from points in Illinois and Indiana; again, ice was brought from the coast of Maine by vessels to Savannah and thence by rail to the peach-shipping stations. One year, after careful preparations were made to handle the crop, owing to climatic conditions there was not a car of peaches forwarded.

From my knowledge of the situation I can positively state, first, a bulletin was posted each morning by the railroad company, stating the number of cars forwarded the day before, and their destination, so that each shipper would know the exact situation.

Second. The Armour Car Line people, or Armour & Co., did not purchase any of the peaches, and were in no manner interested in the purchase and sale of same.

Third. They had no voice in the distribution or allotment of the cars that was within the province of the railway company through its authorized agents.

Fourth. The tariff schedules for refrigeration, which included all cost for that service, covering the icing of the car for the purpose of cooling same before placing the fruit in it and all icing and care of cars at all intermediate stations to its terminal point, was placed on the waybill by the originating line, and settlement made with them to the Armour Car Line, not by the terminal line, as indicated in the testimony.

Having familiarized myself with the cost of refrigeration by the Armour Car Line, I have no hesitation in saying that in my opinion the same is fair and reasonable, as well as the charges made by the railway for transportation. The canteloupe and plum shipments are included with the peaches.

The movement of the peach crop is a transportation problem peculiar to itself. It occupies the space of time from a month to six weeks' duration. In my judgment, the enactment of any legislation effecting the present arrangements that the railways are able to make with the car line would result in the latter withdrawing from that service. They can not afford to decrease the cost of refrigeration and give satisfactory service.

The railways are unable to own and furnish the special equipment to handle the crop within the limited time. Consequently to curtail the existing satisfactory arrangements or detract from it in any manner would prove an injustice and financial loss to the southern producer of fruits and stop the rapid progress now being made.

The interest I feel in the success of that industry owing to my past connection with it, and the kind treatment accorded me at all times by the producers, is my excuse for inditing this appeal to you.

Thanking you for the opportunity, I remain, dear sir, yours, very truly,

JOHN M. EGAN.

STATEMENT OF H. L. BOND, JR., ESQ.

Mr. Chairman and gentlemen, as I labor under the disability of being a railroad attorney, perhaps I ought to say that I do not represent more than one railroad, and possibly in some matters do not reflect the opinion of other railroad counsel. Possibly the committee will hear me on the theory that I have never been in the legislature or held any public office, and therefore, under Judge Crump's definition, am one of those entitled to speak on these matters—at least in Virginia. [Laughter.]

Now, I want to avoid, as far as I can, a repetition of what has been so well stated by Mr. Hines. I want to say that in my opinion, and I think in the opinion of every other railroad lawyer, he has not in any respect exaggerated the importance of the matters here, or the difficulties of the proposed centralization of rate making. I think I can perhaps add to what he has said only by calling the attention of the committee to specific instances.

Mr. TOWNSEND. What company do you represent?

Mr. BOND. I am second vice-president of the Baltimore and Ohio Railroad Company. I hold in my hand the official record of the Maximum Rate case—by the way, the only copy the Commission had. The order of the Commission in that case was made on the complaint of the Chicago Freight Bureau against 35 railroads. The order is as follows:

It is ordered and adjudged that the above-named defendants, and each of them, engaged or participating in the transportation of freight articles enumerated in the Southern Railway and Steamship Association classification as articles of the first, second, third, fourth, fifth, or sixth class, do, from and after the 10th day of July, 1894, wholly cease and desist, and thenceforth abstain from charging, demanding, collecting, or receiving any greater aggregate rate or compensation per hundred pounds for the transportation of freight in any such class from Cincinnati, in the State of Ohio, or from Chicago, in the State of Illinois, to Knoxville, Tenn., Chattanooga, Tenn., Rome, Ga., Atlanta, Ga., Meridian, Miss., Birmingham, Ala., Annis-

from Ala., or Selma, Ala., than is below specified in cents per hundred pounds under said numbered classes, respectively, and set opposite to said points of destination, that is to say—

And here follows the complete tariff for the six classes, and then the order continues:

And said defendants and each of them are also hereby notified to further readjust their tariffs of rates and charges so that, from and after said 10th day of July, 1894, rates for the transportation of freight articles from Cincinnati and Chicago to southern points, other than those heremabov specified, shall be in due and proper relation to rates put into effect by said defendants in compliance with the provisions of this order.

And it is further ordered, That a notice embodying this order be forthwith sent to each of the defendant corporations, together with a copy of the report and opinion of the Commission herein, in conformity with the provisions of the fifteenth section of the act to regulate commerce.

Mr. Spencer has told you that that affected two thousand rates. I have the estimate of the traffic officers of some of the southern roads—informal, of course—that that order would have meant a loss of revenue of at least \$3,000,000 per annum; or, let us say, it would have destroyed the borrowing power of those railroads to the extent of \$50,000,000.

Now, we must admit, I think, that a \$50,000,000 case is an important matter. It may have been only a coincidence, but this order was passed, as you will remember, in 1894, when these railroads were flat on their backs and a large part of the mileage of the present Southern Railway was in the hands of receivers. The decision of the Supreme Court in the Maximum Rate case, which has been so bitterly complained of as depriving the Commission of this power, was made in 1897; and it was only following that decision that the revival in the railroad prosperity and credit of this country took place. That may be only a coincidence, but in the minds of a great many railroad people, investors and managers, it is more than a coincidence. They think that that decision of the Supreme Court removed a cloud from the credit of the railroads of this country, and that the legislation proposed here is legislation that will recreate that cloud on the railroad credit. Now, that is a view. But, whether we may agree with that or not, I think the committee must agree that these matters are of great importance.

Let us look at it, then, from the point of view of the public, and not simply of the railroads. In the first place, what is the situation of the railroads of this country to-day? It is only two years ago that every one of the trunk lines was refusing to take cars, refusing to accept freight from its western connections. Why was that? Obviously because the railroads of this country had not kept up with the growth of the country; and the reason they had not kept up with the growth of the country was because of the depression that existed from 1893 on to 1899 or 1900. Now, unless these railroads have credit it is impossible for them to keep up with the growth of this country, for the only way they can get the money to keep up with that growth is to get it either on stocks or bonds; and if you deprive the railroads of this country of their credit the growth of the country will stop. It is a physical impossibility for the country to grow without improved transportation facilities. It is not a question of rates, it is a question of facilities. There is not a merchant in the country who will not tell you that two years ago he did not care what rate he was charged if he could only get a car.

Now, in another aspect let us look at the public importance of these matters. In 1890 the New York Board of Trade and Transportation filed a complaint with the Interstate Commerce Commission that the railroads running from the ports of the Atlantic seaboard and of the Gulf were charging less on imported merchandise from Europe carried on through bills of lading than they charged on merchandise originating at the seaboard, and that that was an unjust discrimination under the interstate-commerce law. Among the defendants were practically all of the great trunk lines and a great many of the other roads; among the others were the roads from the port of New Orleans, at least the Texas and Pacific. The Commission decided January 29, 1891, that that method of making rates was illegal—was discriminatory—and they proceeded, by a bill in equity in the circuit court in New York, to enjoin all the defendants. They did not catch some of the defendants in New York, but they caught the Texas and Pacific Railway, and they obtained an injunction against the Texas and Pacific to restrain that company from charging less on import traffic than it charged on traffic originating in the port of New Orleans—in the city of New Orleans.

That case was affirmed by the circuit court of appeals, sitting in New York, June 3, 1893, and it went to the Supreme Court of the United States and is reported in 162 U. S., 197. The Supreme Court (March 30, 1896) held that the present act to regulate commerce was an act for the promotion of commerce and not for its restriction and destruction; that under the terms of that act, under the third and fourth sections of the act, the commercial conditions affecting this import traffic could be considered and must be considered, and that the failure of the court of appeals and the circuit court and the Interstate Commerce Commission so to consider it required a reversal. Now, what did that do for the port of New Orleans? It kept open that port. It was that decision that made the growth of that port possible. The Commission had it closed. If the provisions of the Quarles-Cooper bill had then been law the port would have been closed to imports from 1891 to March 30, 1896. Of course, the trunk lines were not sorry to have it closed, but I am just giving that as an illustration of the importance of these decisions, the far-reaching effect on railroads, and not merely on railroads but on the communities.

It is not so much the possibility of any bias against railroads on the part of the Interstate Commerce Commission or any other commission that creates apprehension with those who think—who have to think—about these matters. You take any set of men and you give them an occupation that takes all their thought and mind, and the stronger-minded those men are the more apt they are to evolve some theory; the more apt to want to shape the world to suit what they believe—and sincerely believe—to be the right course. Why, even as I may say in confidence to the lawyers present, we sometimes believe when a member of the bar is elevated to a court beyond which there is no appeal, that his views on political economy and government generally have some effect on his views of the law. Much more is that the case and it is bound to be the case with any commission that is appointed to deal with such a matter as the transportation of this country. And we are not speaking now from any theory; we have only to look at the history of the subject.

Take the very first case that went to the Supreme Court from the decision of the Commission, which was the Party Rate case. The Commission in that case decided that it was a violation of the law for the Baltimore and Ohio Railroad Company to sell tickets to parties of ten or more at 2 cents a mile, because it was a discrimination against the first-class passenger. Of course the Supreme Court, when the case got there, decided that there was no justification in the law for any such opinion. The Commission's decision, as you will perceive, was not in any way, shape, or form directed against the carrier. It was a decision that absolutely would have driven out of business every small traveling theatrical company in this country, and would have stopped your baseball nines.

Mr. MANN. That would be an attack upon all our institutions.

Mr. BOND. Yes; our national game. But that fact did not appeal to the Commission, although it was urged on them with tears. They had conceived a theory as to how passenger rates must be adjusted in the country, and had decided that they must be spread evenly over all the passengers, and that if I, as a member of a baseball club, traveled in the same car with you, who were a first-class passenger, I was somehow injuring you if I did not pay 3 cents a mile and you had to pay 3 cents a mile. Now, that was a pure theory, and that is not the only instance. This instance of the decision as to the import rates was just simply another theory. They thought—they found—that unless they restricted the carriers to the same rate on imports that they charged on local business from the seaports that there was nothing, as they said, in the act to cover the business, and they could not control it, the whole theory being that they had to spread this act so as to control everything. That was purely a theory.

The same way in all these cases on the long and short haul. Long after the courts had decided that the commercial conditions affecting the traffic, the competition of markets, the competition of other carriers—although they were rail carriers—long after the courts had decided that those matters were circumstances and conditions to be considered under the fourth section of the act, the Commission went on and tried to distinguish the cases and say that this case or that case was not covered by the decisions of the court. They just hung on to that theory to the bitter end; and it was only in 1902 that Chairman Knapp told you here that these decisions had practically destroyed the fourth section of the act. Now, that was a theory—in perfect good faith, of course, but still a theory—that would have destroyed the whole fabric of the business of the South. The whole South is built up on the other theory, and no business man in the South would have known whether he was located in the right place or the wrong place. Now, theorizing is a quality of the human mind; it is not confined to any body of men, it is universal; and it is one of the serious things to guard against in this matter.

Mr. TOWNSEND. Is not that also possessed by the railroad men who fix tariffs?

Mr. BOND. There seems to be an entire misconception of how rates and tariffs are fixed by railroad men. Of course the tariffs are a historical fabric; but the tariffs of this country to-day, all the tariffs that are made to-day are made by the shippers and the railroads together. They are made by two sets of people who have one common interest

and that common interest is that the traffic shall move. Unless the traffic moves, there is nothing in it for the railroads. Unless the traffic moves there is nothing in it for the shippers; and they have got to come together on a proposition that will enable the traffic to move; and that is the distinction, and the vital distinction, between the making of rates as they have been made in this country, by the shippers and the railroads in conference, and the making of rates by a governmental board that sits up and evolves a theory of how the laws of trade should operate, what community should have an advantage, and how much of an advantage, and then tries to demonstrate that theory despite the laws of trade.

Now, that is the vital and essential difference. And when you hear people talking of railroads sitting up and making rates, they are talking about something they know nothing about. The railroads do not sit up and make rates; they can not sit up and make rates; they are absolutely in the power of these commercial laws. They have got to make rates that will get the commodities to market, that will enable the commodities to move in competition with the same commodities moving from some other source of supply, and what they have to do is to agree with the shipper as to what rates will move the traffic.

And I want to say that it is not because we have not had able men on the Commission, because we have had great ability on the Commission; that their record in the courts is twenty-two misses to one bull's-eye and two in the next ring. That is their record. [Laughter.] That is not because they are not able men. It is because they are able men, because they have been strong-minded men. But being strong-minded men they would evolve a theory by which the business of this country was to be governed, and, unfortunately for them, the Supreme Court said that there was no such theory in the law, and that the theories they evolved were contrary to the spirit of our institutions.

I think that the committee must have appreciated from the statement of Mr. Hines the further difficulty of the physical disability—impossibility—of bringing to one central office in the city of Washington the questions which are under daily and hourly discussion by thousands of railroad traffic men and shippers by railroad throughout this country. What he said there as to the changing of a rate, one rate bringing all the others in, is illustrated by the order in the Maximum Rate case, which I have read to you, and is absolutely true, as he so graphically stated it. The rates in this country are not a set of independent lines; they are a fabric. They are so interwoven everywhere that if you shorten one thread you will make a kink in that fabric that may run almost anywhere. And there is not anybody in the railroad world who can tell where it is going to run.

I want to call the attention of the committee to the fact that since the passage of the act to regulate commerce the lines that use the official classification have found it necessary to promulgate 26 of these documents [indicating book].

Mr. MANN. Might I ask you if you could furnish to the committee some copies of the official classification, of the last edition, and also some copies of your schedule of rates?

Mr. BOND. I shall be very happy to do so. The schedule of rates, if you cover all the commodity rates, would probably be something of a volume, but I shall be glad to furnish it if you want it. As a mat-

ter of history, perhaps of curious history, I have attached to this official classification extracts from the acts relating to the Baltimore and Ohio Railroad Company, the first railroad of any size in this country, which show the rates and classifications in force on that road by virtue of the statutes down to 1840. The final wind up, I will say, was that with the exception of flour, marble, granite, soapstone, limestone, and lime, the rate per ton per mile on the Baltimore and Ohio Railroad for all articles was 8 cents per ton per mile, and prior to that time some other articles, including whisky, had been transported at the rate of 4 cents per ton per mile. The present official classification contains 9,800 articles.

The CHAIRMAN. That paper you have referred to there is so detached that it could go into the minutes of this meeting.

Mr. BOND. Yes, sir.

The CHAIRMAN. Let it go in the record, then.

Mr. BOND. Very well.

The extract referred to is here printed in the record as follows:

CLASSIFICATION AND RATES—BALTIMORE AND OHIO RAILROAD.

(1826, chapter 123, sec. 18, original charter.) On all goods, produce, merchandise, or property of any description whatsoever, transported by them from west to east, not exceeding one cent a ton per mile for toll and three cents a ton per mile for transportation; on all goods, produce, merchandise, or property of any description whatsoever, transported by them from east to west, not exceeding three cents a ton per mile for tolls and three cents a ton per mile for transportation.

(1830, chapter 117.) The company may contract for transportation of mail: "and said company shall have power to make special contracts with any authorized officer or agent of the State of Maryland, or of any other of the United States, or with any corporation, copartnership or individual, for the exclusive use of any car, or part of a car, or wagon on said road, for a limited time or distance, and for the transportation thereon of horses and other living animals, and of carriages, furniture, plate, jewelry, and machinery of any description, on such terms as may be agreed on by the parties.

"That it shall be lawful for the president and directors of the Baltimore and Ohio Railroad Company aforesaid, or a majority of them, to regulate and fix, from time to time, the price or sum to be charged and taken by the said company for receiving, weighing, delivering, and storage of merchandise, produce and other articles; and for the transportation of any single bale, box, or parcel of merchandise or other articles not exceeding two hundred and fifty pounds."

(1836, chapter 261.) In lieu of the charges for toll and transportation authorized by act of 1826, chapter 123, section 18, "the said company shall have power to charge on all goods, produce, merchandise, or property of every description whatsoever transported by them upon their said railroad, not exceeding eight cents per ton of two thousand pounds per mile, provided that the maximum of charge per ton per mile upon the said road upon the articles of flour, grain, corn, oats, tobacco, whisky, coal, iron, lime, ore, lumber, plaster, stone and wood, fish, and salt shall not exceed the rates allowed by the said act of incorporation.

"That in all cases where the weight of any article shall not exceed five hundred pounds the said company shall have power to charge, at their discretion, either by bulk or by weight, on their said road and its branches, estimating fifty cubic feet as equivalent to a ton.

"By the act of 1840, chapter 86, grain, corn, oats, tobacco, whisky, ore, iron, and lumber are taken out of the exception made by the act of 1836; ten barrels of flour are to be taken for a ton, and the charges upon marble, granite, soapstone, limestone, and lime are to remain as authorized by act of 1826, chapter 123."

Mr. STEVENS. Have you any estimate of the proportion on that road of the traffic moving by commodity rates as compared with that moving by class rates?

Mr. BOND. I have not, although the Baltimore and Ohio Railroad is

a very large bituminous-coal road. Bituminous coal does move in carloads under a commodity rate practically.

Mr. STEVENS. So that what might be true of your road would not be true of all?

Mr. BOND. Might not be true at all of other roads.

Without repetition I can hardly dwell further on the general propositions involved, but I want to try to make some suggestions which possibly may be helpful. The line of distinction, of course, is the line that must be drawn between the theory of regulation under the present act, which is a theory of regulation by an administrative body all of whose acts shall be subjected to the decision of a court before they can be put into effect, and the proposed theory of regulation by which this administrative body shall be vested with a power—a legislative power—that makes it—to a certain extent, at any rate—independent of and superior to the court in the matter of rates.

As soon as you cross that Rubicon, no matter how you may hedge in that legislative power, you have made a vital step, a step not in the mere matter of procedure, but in the matter of principle of regulation. And it is that fact which has excited so much interest, and possibly, I may say, opposition to the proposed legislation. It is not because the carriers, or anyone, would deprive the Commission of any efficient procedure under the present theory of regulation, but it is because in the estimation of a great many people, and particularly of the lawyers, this change—this proposed legislation—is a radical step, a change of principle; and however it may be hedged in, it is regarded by them as threatening and dangerous. In my opinion no such change of principle is necessary to meet all the requirements of the situation and all the requirements of the public. But before I come to that, I should like to refer a little to the existing state of the interstate commerce law, because without some statement of that sort a good deal that I may want to say would not appear relevant.

The law was reinforced most strongly, and I might almost say revived, by the passage of the act of 1903, that is, the Elkins Act. The mistake that had been made in the effort to enforce the law as against rebates and discriminations was the mistake of endeavoring to enforce the second section of the act. There seemed to be no appreciation of the importance of the sixth section, which required all the rates to be published and the schedules to be filed. Now, it is one thing to find that a railroad company has charged two different men two different rates under substantially the same circumstances and conditions, even of transportation. That is one thing, and that is a very difficult thing, because they do not do it. It was perfectly easy to give one's own shippers the advantage over the shippers by another line without any discrimination among one's own, and unless the carrier could give its shippers that advantage without such discrimination it would make no cut in rates. That is the whole secret. But when the carrier must make all rates public and then keep to those public rates, you have a case that can be proved absolutely and easily, and, further than that, you accomplish the result of preventing discrimination through the mathematical proposition that things that are equal to the same thing are equal to each other.

Now, that is the key to the enforcement of the law to-day. Further than that, the Elkins Act gave a clear remedy by injunction, which was

be thing that was absolutely and cryingly needed for years. Whatever may be thought of government by injunction it is the only government to accomplish results, such as you wish to accomplish in this case.

The Commission, if it has any reason to believe that any common carrier is not charging the published schedule rates, can apply for an injunction and get an injunction of the most sweeping kind, and there is not a railroad carrier in this country or any other country that would dare to violate such an injunction. So that that provision now is the key of this whole act. Despite the advice of railroad counsel, the Commission were a long time finding it out; but they have it now, and there is nothing that you could do that could add to the efficiency of the present remedies against discriminations and rebates. But that enforcement is an enforcement which under the act can only be had by and through the Commission, and it is of vital interest to the carriers as well as to the public that the Commission should continue to have the time and to have the disposition to enforce the provisions of the sixth section through the Elkins Act.

That act has changed the situation in a way that seems hardly to have been considered in the draft of some of these measures. The act says:

Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate or any offer to depart therefrom shall be deemed to be an offense under this section of this act.

In other words, under this act it is an essential part now of your whole system of regulation that these published schedules are the evidence and the only evidence of what the rate is. You have got a complete, absolutely efficient system, as I say, if it is enforced, to make your rates uniform as between shippers—that is to say, to secure the observance of the published rates.

Now, of course the question is, suppose those published rates are not right? Suppose they violate the third or the first or the fourth section, what is to be done? Well, as the act stands to-day, the Commission can institute an investigation on its own account, or anybody can file a complaint with the Commission, which it will investigate. And after it has investigated, it can enter its finding as to the validity, the lawfulness, of those tariff rates, so far, and it can get an injunction if they are thought to be unlawful, restraining the further continuance of those rates. That puts it up to the carrier, of course, to publish a new and a different rate, because he can not carry the traffic at all under the Elkins law unless he has a schedule in effect covering the rate, and if the charging of that particular rate has been enjoined he has to publish a new schedule.

The complaint, as I gather, is that under that system there is too much delay; that the carriers can litigate the question when the Commission goes into court to get the order; that the litigation as the law stands may be carried to higher courts, and so on. And that complaint is always presented as though it were the case of some single shipper about some single rate, and without any very grave consideration of the importance of these cases or of the enormous amounts involved in them to the carriers and to the communities.

Mr. Knapp, when he appeared here before this committee in 1902 on the Corliss-Nelson bill, stated the question to be this:

If, after complaint and notice and due hearing and opportunity for the carriers to show every fact upon the question presented, if those facts establish with reasonable certainty that charges complained of are wrong, the question is, shall the Commission have authority to say what the carriers are to do to correct the wrong? That is all there is of it.

And, according to the opinion of the New York Herald, that situation has not changed. I read from an editorial in that paper of this morning:

The proposition against which strongest objection is made is that described as delegating the tremendous power to fix the railway rates of the country, and it is urged that this would inevitably lead to operation of the roads by the Government. The phrase is grossly misleading. The manufacturing, commercial, and agricultural organizations, and individual shippers conducting the agitation do not ask that any Government authority shall take the "fixing" of rates out of the hands of the railway managers. It is urged merely that the authority now exercised by the Commission to hear and investigate complaints as to the injustice of a particular rate shall be extended, so that a rate which the Commission may prescribe as reasonable shall be substituted and become effective, but subject to revision by the courts. This is the power the Commission was supposed to possess during the fourteen years of its existence and until otherwise decreed by a judicial interpretation of the interstate-commerce act.

Now, if that is all, as Chairman Knapp says it is, and as I believe it is myself, to revolutionize your whole theory of regulation, to cross this Rubicon of vesting in a commission legislative power, in order to accomplish those results, is about equivalent to blowing up this Capitol building with dynamite in order to dislodge the English sparrows that build their nests in the eaves. There is no necessity for it, and the means are absolutely unjustified by the end. I confess that personally—and I do not, in this, voice the opinion of a great many railroad counsel—I have always had sympathy with the view of the Commission to the effect that they ought to have the chance to say what, in their opinion, the changes should be in order to bring rates in line with the law, and that there ought to be some way of giving that opinion of theirs some legal effect.

Mr. STEVENS. Would you make it advisory?

Mr. BOND. No, sir; I would not. I would adopt the suggestion that has been made here. I think that is a perfectly feasible suggestion.

Thereupon the committee took a recess until 2 o'clock p. m.

SATURDAY, *January 21, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. H. L. BOND, Jr.—Continued.

The CHAIRMAN. You are to proceed for twenty minutes, Mr. Bond. As our time is limited you will not feel aggrieved if I call time on you.

Mr. BOND. Very well, Mr. Chairman. Gentlemen, I am far from wishing to suggest legislation. I believe individually that the interstate-commerce act as it is, if it is worked out now with the aid of the

kins Act, and in the light of the decisions of the Supreme Court, which have settled the main principles of the law, is a perfectly feasible and competent law. But I realize that what you gentlemen may wish to know is how far it is possible to comply with the wishes expressed by the chairman of the Interstate Commerce Commission and by others, without taking the radical step of departing from the whole scheme of the present interstate-commerce act.

You may also wish to know what is the utmost that can be done to expedite the final decision of controversies as to rates that may arise between business interests and the railroads. With a view to answering those questions for myself alone, because I have had no opportunity to consult other railroad counsel on this matter, and as I felt if I appeared here you would have a right to any knowledge or suggestion that I could impart, I have sketched a plan by which I believe you can accomplish everything that is asked and accomplish it much more efficiently than it would be accomplished by any pending bill. This plan is as follows:

1. Establish a special court of equity composed of circuit judges so assigned that they be not confined to the one class of work, but participate in work on circuit and in circuit courts of appeal.
2. Provide a larger Interstate Commerce Commission.
3. Provide that when the Commission in a regular proceeding on petition finds any rate unlawful the Commission shall find also what change is at that time necessary to make the rate lawful.
4. Provide that in such case the Commission forthwith file a petition in the court, accompanied by its findings, record of testimony, etc., and praying an adjudication of the matters embraced in the findings as against the defendants.
5. Provide that thereupon the court issue process with copy of the petition attached, notifying each defendant to appear on a day named for hearing of the matter not less than thirty days after service of process, and to file an answer ten days before such hearing. In default of answer and appearance let the court decree the matters as found by the Commission. If a defendant appear and answer, have a speedy hearing, without formal pleadings, etc., on the record filed by the Commission (unless the court provide for additional evidence), and have the court decree what, on the law and the facts, is lawful and equitable as the present rate.
6. Provide that the court's decree be conclusively binding on the defendants for one year thereafter; and the carriers defendant be bound to publish and file schedules in conformity therewith, compliance to be summarily enforced.

Mr. TOWNSEND. Is not that making a rate for the future?

Mr. BOND. No, sir; it is deciding, as I see it, what every court would be called upon to decide to-day in a suit of a shipper under the eighth section of the present act, who alleged in his suit that the rate charged him was unreasonable and asked damages. The court would be called upon to decide as of that time whether the rate was unreasonable, and if so, how far unreasonable, because the measure of damages would be how far it was unreasonable. In this case that decision is given effect for the future, not by virtue of the decree of the court, but by virtue of the act of Congress, which says that after a rate has been so adjudicated there shall be a conclusive presumption as against the carriers

who are parties to that proceeding that that rate is reasonable, and that conclusive presumption shall continue for the space of one year. I regard that as a reasonable regulation.

Now, if there is any question arising in anybody's mind that it is not a reasonable regulation, or that the time is too long, because in that time there might be a change of circumstances, any such technical defect—for it is nothing more than that—can be readily cured by providing that any carrier feeling aggrieved by this provision of the law because of some change in circumstances that renders the rate unjust and unreasonable as to him, can apply to the court for a readjudication in the same proceeding; and then provide that when that readjudication is had the rate so readjudicated shall continue for a year from that date. I think you will find that no carrier would ever come in and ask for a readjudication.

Mr. MANN. You give the shipper the same right, I suppose?

Mr. BOND. And give the shipper the same right.

Mr. STEVENS. That would only bind parties to the litigation, would it?

Mr. BOND. You can not bind anybody but the parties to the litigation. And in working out the details of any such proceeding there ought to be a provision that the court could admit any party interested or claiming an interest as a defendant. So that if a community found that there was a proceeding of this kind pending in which its interests were vitally involved, it could apply to the court.

Mr. SHACKLEFORD. Would your scheme provide for the instituting of a through rate otherwise than by the agreement of the carriers?

Mr. BOND. You mean in case there was an existing through rate?

Mr. SHACKLEFORD. No; if the Commission wanted to prescribe a through rate where more than one carrier was involved, would your scheme permit that to be done?

Mr. BOND. You mean to provide a through rate where there is none existing or to change one already in existence?

Mr. SHACKLEFORD. To change one or institute one, either?

Mr. BOND. It has never been decided whether the Commission could institute a through rate or whether the law could institute one. It has been decided that where there is one in existence it is subject to regulation, and after that regulation one of the carriers can not change the character of the transaction by withdrawing from the through rate.

Mr. SHACKLEFORD. Where there is not a through rate, can your suggestions be broadened enough to authorize the Commission or the court to institute a through rate?

Mr. BOND. No, sir; and I do not think that there is any pending legislation that does do that which is constitutional.

Mr. MANN. Suppose the Interstate Commerce Commission under that plan should still fix the rate that each carrier should charge on a through bill of lading, which would practically make a through rate?

Mr. BOND. Yes, sir.

Mr. SHACKLEFORD. Would that compel the connecting carriers to receive goods from one another and carry them through to their desired destinations?

Mr. BOND. That is compelled, so far as it can be, by the third section of the act now. But if you have in mind now the provisions of pending legislation that the Commission where it disturbs a joint rate

has a right to decide what proportions of that joint rate shall be taken by the parties to it, I would like to point out that the defect of that provision as it stands—I mean in the Cooper-Quarles bill and other bills—is that you do not provide any hearing for the carrier on that part of the proceeding, and that is just as much a matter on which the carrier is entitled to a hearing in court as any other, and if that is the exclusive method of determining that fact, then your bill is defective, and if it is not the exclusive method of determining the fact, then you are not accomplishing what you are after. So that there is not any existing measure which provides a practical way to do that.

My suggestion as to the only way to handle a through rate in that case is to enact right from the shoulder that the new rate shall be divided on the same basis as the old one. Then you have a rule, anyway, and if any carrier can say that that rule is not fair, then you have the exceptional case to take care of, whereas if you leave it purely as a matter of agreement, and then leave the Commission to decide in the absence of an agreement, you have not any rule established and the whole thing is in the air.

The CHAIRMAN. That scheme of yours would recognize and legalize the wrongs complained of in the Harvester case, where the switch 300 feet long connecting with another road received 25 per cent of the rate?

Mr. BOND. How was that?

The CHAIRMAN. If you simply legalized that division or recognized that division you would simply perpetuate that form of contract, would you not?

Mr. BOND. It is the question in the Harvester case whether it is a division in fact at all, or whether it is a mere device to give a discriminating rate. If it is a division at all, then there is not any provision of the law, nor is there any provision that you can enact, that will enable you, without providing a hearing, to say what that division shall be. Now, there is a great deal of misunderstanding about those terminal-road cases. If the committee would like to hear anything about them I should like to give my views about them. There are terminal roads and terminal roads. The question is now as to such a case as the chairman presents, whether that is really a railroad at all with which there should be any prorate. That is a question that can be absolutely tested under the Elkins law, because if the sharing of the rate with that road is a mere device, if that road does not in fact perform a part of the transportation which entitles it to a share of the rate, then it is clearly within the provisions of the Elkins Act.

There are terminal roads that are entirely different from that. Let me cite an instance without naming any names. Suppose there is a road, say 40 miles long, and the stock of that railroad is owned by a manufacturing company, say engaged in the manufacture of steel, and under the charter of that manufacturing company that company is authorized to hold the stock of that railroad company and that railroad connects with three or four trunk lines. All the supplies of the manufacturing company must go over that railroad. The railroad is 40 miles long. The railroad company says, "We must have 70 cents on every ton of coke and coal. If you do not give us the 70 cents, you do not get the freight, because this railroad will not accept any less, and all the supplies going to this manufacturing plant must go over the railroad." Now, the officers of that railroad company take the position

that that is an advantage which, under the laws of the State, they are entitled to. Let me say that the 70 cents does not exceed the local charge per ton per mile which they are authorized to make under the State law; but it may be at least 20 cents a ton higher than would ordinarily be given a railroad as a prorate of the through rate. What are you going to do? That railroad says, "We have a position of commercial advantage. We can get our local rate, or very near it, and we are going to take it;" and they further politely remark, "If you three or four railroads get together and say that you will not give us that, we will have you indicted under the antitrust act."

That is a perfectly fair view for them to take. Are they not entitled to that, as a matter of law? How are you going to meet that situation? We can not meet that situation just because you gentlemen here have suspended the laws of trade, have suspended the law that makes the self-interest of one man keep the self-interest of another man from gobbling things up; and those railroads can not protect themselves against that proposition because you have suspended their right of agreement with one another, and that would be the only way to meet it. Congress can not meet it.

Mr. MANN. You have instanced the Illinois Steel Company's case as a suppositious case?

Mr. BOND. I do not say that, whether I have or not.

Mr. MANN. That is a case that is in my Congressional district, and I am perfectly familiar with it. Can not we meet that by giving the Interstate Commerce Commission the right to say what shall be the respective proportions of the through rate?

Mr. BOND. I do not think you can.

Mr. MANN. Of course it is a delicate position for you to be in, because you carry most of the freight.

Mr. BOND. I wish we did.

Mr. MANN. I know you do.

Mr. BOND. But it is a very serious question; I mean from a railroad standpoint; because you once admit that that is a sound legal position that they have got, and it is a sound legal position——

Mr. MANN. As the law now stands.

Mr. BOND (continuing). As the law now stands.

Mr. MANN. I have no doubt of it.

Mr. BOND. And I have very serious doubts whether you can amend the law so as to meet it unless you discriminate against the railroad company whose stock is owned by a manufacturing company, and I do not believe that you can make any such discrimination in the law. You have the situation as it is, and it is a very serious one from the railroad standpoint.

What are we going to do with it? The same thing spreads all over the country, and if you are going to tie these railroads up and suspend their rights of contract and let any manufacturing plant that owns a railroad have that advantage over them the result will be that you will force all large manufacturing plants in this country into the railroad business. They have got to go into the railroad business.

Mr. SHACKLEFORD. Would it not be better to force all of them out of it?

Mr. BOND. That is a very serious question whether you can. That is a question which I do not believe this committee is prepared to

handle under this law. I have not heard any discussion of anything or heard anything suggested in the way of a practical scheme of meeting it.

Mr. TOWNSEND. Suppose the Commission were allowed the fixing of rates?

Mr. BOND. How are you going to do that? Where is the bill that does that? None of the bills proposed now, or heretofore, meet the case at all. The powers conferred to fix rates and to divide joint rates will not enable the Commission to accomplish what they wish in this case.

Mr. TOWNSEND. Suppose we make that. Suppose we give the Commission the power to fix the rate on that road, which it is to charge?

Mr. BURKE. Suppose the rate is a reasonable rate, Mr. Townsend.

Mr. TOWNSEND. I am supposing that it is not. He has shown that it is not.

Mr. BOND. I have not shown any such thing. I am only stating the position.

Mr. BURKE. Suppose it is shown by the railroad commission to be a reasonable rate?

Mr. BOND. They are within their legal rights, absolutely.

Mr. MANN. As a matter of fact, that little railroad—it is only 40 miles long, along the southern shore of Lake Michigan—is one of the most expensively constructed roads in the United States.

Mr. BOND. Absolutely. And I think their legal proposition is sound. And I have been up against it. [Laughter.]

I wanted simply to point out that this suggestion of mine, if it is a question here of saving time and getting a final decision in these matters, is practicable; that whereas under the Cooper-Quarles bill you must have forty days before the case can possibly stand for hearing, with the utmost possible dispatch, and whereas your order without any contest does not go into effect for thirty days, and in case of contest it does not go into effect for sixty days, even if the court does not suspend it—and let me say that under your laws the court has got to suspend it, and you make the act unconstitutional if you say that it can not suspend it, and if it be suspended the whole effect of the act is destroyed—whereas under the Cooper bill you can not have any order go into effect in the first place, even if the court does not suspend it, within less than sixty days. Under the section that I have suggested you will have an adjudicated rate within sixty days, because this court can decide these cases a great deal faster than the Commission can send them to it. The Commission has to do all the preliminary work, and what is more, it has to investigate cases where it finds that there is no unjust discrimination or unjust rate, and it is only the other class of cases, those in which there is an unjust rate or discrimination, which go into the court.

The reason you save time is because under all the pending bills there is a complete reversal of the positions of the parties. You start in practically with the Commission or the complainant before the Commission in the position of plaintiff, and then you reverse the whole situation and make the railroad the plaintiff. Now, that is lost motion, waste of time, and that method was only adopted to meet a view of the Commission that if they had to go into all the circuit courts they were not in a dignified position, if they had to go in as plaintiff to

enforce their own orders. Now, if you have a special court, that lost motion is done away with, and there is no use in reversing the situation of the parties, and you can go right into court, and then you have all your records in one place; and you are in the further situation that if you find in the future that this plan does not work fast enough, then you can dispense altogether with the preliminary trials before the Commission, and you can let the Commission go into court simply on their own examination to see if there is something wrong, and further expedite it in that way; and you have all your records as to what has been adjudicated in one place.

I have exceeded my time, Mr. Chairman, I am afraid. I thank you very much.

STATEMENT OF MR. DAVID WILCOX, PRESIDENT OF THE DELAWARE AND HUDSON RAILROAD COMPANY.

Mr. WILCOX. If I can have only the hour that remains, Mr. Chairman, I will endeavor to comply with the desires of the committee, of course.

Mr. Chairman and gentlemen, the Delaware and Hudson Company, of which I have the honor to be president, was incorporated by the State of New York in 1823 for the purpose of bringing a supply of hard coal—as they called it in those days, “stone coal”—from Pennsylvania to New York. Its rights were confirmed by the legislature of Pennsylvania very shortly thereafter. I may say that it antedates the law to amend charters, and comes under the rules laid down in the Dartmouth College case, so that it has its interests.

The company has been carried on since that time continuously without a receiver or a reorganization, and as I have occupied my office but a very short period of time—being, in fact, like, I believe, most of the committee, a lawyer—I may say that its conservative management has led to its continued prosperity. During that time it has paid out in wages between, probably, four and five million dollars; in dividends, between sixty and seventy million dollars. It has now about 23,000 employees. The company and its leased companies have about 6,000 security holders. Therefore I may say that there are 29,000 people who are interested, and, with those who are dependent upon them, it is not too much to say that there are 100,000 people who are interested in the continued prosperity of this property. The stock of the Delaware and Hudson Company is very widely distributed. There are 3,800 stockholders, and the average holding of each one of them is \$11,000 at par.

When I applied to the chairman of this committee for a hearing, I did not apply on behalf of the Delaware and Hudson Company, but on behalf of its employees and security holders and on behalf of those who are dependent upon them. My constituency, I may say, is perhaps 100,000; probably that. What has been the cause of the prosperity of this property and upon what depend its 100,000 people? Upon nothing else in the world but the income of the property. Without the income the property is of no value. Without the income there would be no incentive to operate it; and therefore, necessarily, any proposition which tends to place in the hands of the Government, however ably administered, the question as to whether or not this

substantial mass of property shall earn anything, which tends to qualify or limit its earning capacity, affects not the company, for these companies, gentlemen, are of very little real importance. They are artificial persons. They are the means by which the property of the owners is held together and is made productive. That is all there is of it.

If the American people so wish, the corporations may die. But what is to become of the people who are interested in them? What is to become of this enormous mass of property, upon which rests the prosperity not merely of the class whom I have named, but also of those who sell supplies to them, and of the communities through which they pass, and of the communities which will be built up by their extension? It seems to me that that is the serious question, What effect is what you may do here going to have upon the future welfare, productiveness, and value of the greatest single industrial interest of the country? It is a great responsibility, gentlemen. I do not come here as an extremist. If you can devise anything which will be to the benefit of the country as a whole, who will welcome it more than those who are interested in the railroad property? Why should they not? As I said a moment ago, it is the greatest single interest there is in the country. It has eight to ten thousand million dollars' worth of the country's accumulated wealth. As the Delaware and Hudson Company has grown to become a favorite object of investment with estates and institutions which have a more or less fiduciary character, so is it the case with the very large mass of this property generally.

Now, gentlemen, great as I feel my own responsibility with reference to the company with which I am connected, I realize that the responsibility of this committee is very, very much more serious. It may pass an act which shall put it in the power of those who, however well intentioned they are—and I do not wish to join the superheated gentlemen who sometimes want to have the Interstate Commerce Commission abolished because they are not doing anything, and I will say that they are not railroad men, that I ever heard of—yet, having the power, may do great harm. I do not share in that feeling toward the Commission. But, as I say, gentlemen, you may pass an act that will so compromise the value of the property, and the prosperity of the communities of the country, that it will bring widespread disaster. On the other hand, you may pass an act which will fail of operation. Some people say that the present act has not accomplished what was hoped, although I do not agree with that exactly. But you may do the same thing, not intentionally but unintentionally, and the act which you may pass may become a gold brick in legislation. And there are those two great possibilities. You may pass an act which will so compromise the value of the greatest mass of accumulated resources of the country that its efficiency will in a measure cease, or at any rate become less, or you may pass an act which will fail of accomplishing the desired results, and this agitation may go on, stimulated and kept on foot in the methods which you gentlemen know so well, apparently ad infinitum.

What I say, gentlemen, is that it is a very, very serious moment when an Anglo-Saxon government undertakes the charge of people's money and says how much they shall earn by the exercise of their con-

stitutional rights of liberty and property. And it should be recognized that possibly we are at the parting of the ways, and that if this be done it will go on until those constitutional guaranties have but little value, and the only profession worth exercising in the country will be that of holding office in some administrative board.

I do not want to exaggerate, but the committee is certainly aware of the fact that Congress has no special power over carriers. What the Constitution provides is that Congress may regulate commerce among the States or with foreign nations. The shipper is engaged in interstate commerce just as much as the carrier. The manufacturer who ships is engaged in interstate commerce equally with the carrier, and if the plan is to be adopted that the earnings of those who are engaged in this interstate commerce are to be regulated by a governmental and administrative board, it applies just as much to the shippers as to the carriers. There is no substantial difference between them. It applies to everybody. So that it is, as I say, a question that affects the entire community.

The CHAIRMAN. You think there is no difference in the legal status of a common carrier and a shipper?

Mr. WILCOX. Of course, Mr. Chairman, I trust that I have practiced law long enough to have some idea of what the difference is.

The CHAIRMAN. You said no substantial difference.

Mr. WILCOX. No, sir; there is no substantial difference in the power to regulate. The common carrier is bound to charge reasonable rates and not to discriminate. Now, when you have got beyond that I do not think there is a great deal of difference. The common carriers do not derive their franchises from the Federal Government after all; they derive them from the States, and I do not believe that there is any substantial reason for discriminating between a corporation which is engaged in interstate commerce and anybody else who is engaged in interstate commerce. In fact, I think the right to liberty and property, which is guaranteed by the fifth amendment, is a right of a corporation as much as an individual, and my impression is that it has been settled by the Supreme Court of the United States.

Mr. SHACKLEFORD. This legislation is not aimed at corporations any more than individuals, if individuals are engaged as carriers in interstate commerce, is it?

Mr. WILCOX. I think it is a fair comment; but really I think your idea agrees with mine—that is, that corporations and individuals stand on the same footing.

Mr. ADAMSON. Does not the power of Congress over commerce belong equally to anything and anybody engaged in interstate commerce?

Mr. WILCOX. I have not the slightest doubt about it.

Mr. ADAMSON. Whether they use wagon teams or railroads, or whether they are individuals or corporations?

Mr. WILCOX. Yes, sir.

Mr. MANN. But there is a distinction between the power to regulate the rates of common carriers or common warehousemen and the power to say what persons shall sell their goods for? Is not that distinction drawn by the courts?

Mr. WILCOX. If the gentleman please, I thought that I made that clear, or tried to, that the carriers are bound to exercise their public

employment at reasonable prices. But now we have the new doctrine which has recently arisen, that to engage in interstate commerce generally is to be a privilege. If that is so it completely obliterates any such distinction.

Mr. MANN. I do not think there will be any such result as that, fortunately.

Mr. WILCOX. Well, what I say on that is merely in the nature of pointing out that that was what you are coming to. This is simply the beginning.

Mr. ADAMSON. Is not the just and practical criterion as to what prices are charged under similar circumstances at other places?

Mr. WILCOX. I think that is probably the best test, although the Interstate Commerce Commission seems to think otherwise.

My time is brief, and I will pass on. I will say that Mr. Spencer and myself have prepared a brief, which I will file with the committee, which I shall venture to hope that the committee will read, because it endeavors to set forth consecutively our views on the whole subject in a manner which it would be tedious to pursue here in argument, even if it were not impracticable for lack of time.

The CHAIRMAN. What business is the Delaware and Hudson Company engaged in?

Mr. WILCOX. In the railroad business and in mining coal.

The CHAIRMAN. In what proportions?

Mr. WILCOX. You mean the proportions of—

The CHAIRMAN. What proportion of its revenue comes from the production of coal and what proportion from its carrying of coal or from its business as a common carrier?

Mr. WILCOX. Of course it does a large general business in addition to the coal over its railroads.

The CHAIRMAN. Yes.

Mr. WILCOX. And I should say that from the mining of the coal its revenue is a little over 40 per cent, and the balance is from its business generally.

The CHAIRMAN. You spoke of the value of this property as from eight to ten thousand millions.

Mr. WILCOX. No, sir. The value of the railroad property of the country is from eight to ten thousand millions, I said.

The CHAIRMAN. I thought you said the value of this railroad property.

Mr. WILCOX. No, sir; we are not as rich as that, Mr. Chairman. That is what I put the value of the railroad property of the country at. Of course the securities outstanding are \$12,000,000,000, but there is more or less duplication by reason of the treasury assets held by the company, so that I think it would be fair to say \$12,000,000,000 as the outstanding securities.

I will just venture to say this, gentlemen, that when I took office as president of this company, which was less than two years ago, I had been practicing law then for thirty years, and I suppose that I am still a good deal more of a lawyer than a railroad man. I believe most of the committee are lawyers, and therefore we may sympathize with each other. When I took up the office various gentlemen who had been engaged in the railroad service for a great many years, whom I met, said: "Now, we have one piece of advice

to offer to you, and only one." I said: "That is very kind. I should be glad to have more, but I should be obliged for the one. What is that?" They said: "Go slow." And, gentlemen, I have found that the most valuable piece of advice that I could possibly have had. So I want to say to the committee, not merely as a railroad man or as a lawyer, but as an American citizen, that inasmuch as this matter has been forced upon the committee by an agitation which has been largely based, as I conceive, upon misapprehension, and if I had the time I think I could demonstrate that to the committee—I want to urge the committee with the utmost earnestness which is in my power to go slowly about this thing, because a step once taken can not be retraced, and unless it is the right step, as I said a while ago, it may lead to great disaster or it may lead to cruel and exasperating disappointment. Do not do anything until you are sure that you are going to do something effective. That is what the railroad owners of the country would say to you. Do not be in a hurry and do not pass statutes because you think people want something done. Be sure that you are doing something for the good of the country as a whole, not merely for the good of the special regions which are particularly exasperated.

And I will say here we know very little of these conditions in the East—almost nothing. Do not do something merely for the sake of doing something. This is too serious a question for that sort of treatment. If you do anything, if in your ripe judgment, in your wisdom, you conclude that it is desirable to do something, do something which will have value, not something with which your names will be associated either as a failure or as a disaster.

I said that I was not one of those who believe in abolishing the Interstate Commerce Commission. Of course the great benefit of that Commission has been the settlement of claims without controversy. In that manner it has settled over 90 per cent of the claims which have come before it. That is the business way of carrying on business, for the parties to settle. I do not know of any business, gentlemen, which is carried on successfully by third parties who have no interest in the ultimate result, and no business which is carried on by lawsuit. Business by lawsuit would be a thing to be abhorred, a thing which would be impossible. That is where the Interstate Commerce Commission has been useful. The difficulty has arisen out of the other 10 per cent. I do not think so because they quote what Judge Schoonmaker said as showing that the Commission then realized that it had not power to fix rates. That was the construction given to the language of Commissioner Schoonmaker by Judge Brewer.

I suppose that the committee, by the discussions that have been had, has been fully advised of the fact that upon the record there is no question of the reasonableness of rates per se. Upon a brief which I shall have the pleasure of filing that matter is fully argued out. It admits of no question. Even as those advances from 1899 until 1903, regarding which the Commission reported last year to the Senate—even as to them the Commission itself says that it does not claim that they were unreasonable. In an article in the *North American Review*, which was written by one of the most productive of the Commissioners last June, the same statement was repeated, that he did

not claim that they were unreasonable, but simply that the Government ought to have the right to fix them. That is simply and baldly that the Government should fix future rates. There is nobody complaining; there is no case and there has never been a case, as I have no doubt that the committee has been informed over and over again, of unreasonable rates which has been sustained; but the position of the Commissioner who wrote this article was that, as a matter of right, the Government should always intervene in these circumstances.

Now, that advance in rates amounted to what? Thirty-nine thousandths of a cent per ton per mile. And it is interesting to notice that in the report for 1902, in commenting upon the relation of rates between 1898 and 1902, the Commission uses the expression that the rates were about the same. Now, the difference between those two years consisted of a difference of forty-one thousandths of a cent, and the Commission said that the rates were about the same, and the Commission said that the increase in gross earnings was due to the increased volume of traffic. When they came to comparing the rates of 1899 and those of 1903, the difference was thirty-nine thousandths of a cent, two thousandths of a cent less than they had been between 1898 and 1902, when the Commission said they were about the same. Nevertheless, this difference of thirty-nine thousandths of a cent was described as having made enormous additions to the expenses of railway transportation, although a difference of forty-one thousandths of a cent, taking the two previous corresponding years for purposes of comparison, was described as leaving the rates about the same. I suppose that the committee has also been fully advised of the fact that the Elkins law covers the subject of rebates. The Interstate Commerce Commission has so said in its last two annual reports, that that subject is fully covered. So that I shall not stop to talk about that.

But the matter to which I wish to call the attention of the committee is the matter of discrimination between localities. As to that question of discrimination between localities, that is a matter, gentlemen, which you will always have with you. It is a question that arises naturally from the desire for commercial advancement. It is the natural result of commercial rivalry. I have no doubt you remember the language of the Supreme Court, in which it points out, with a great deal of elaboration and vigor, that it is not all discriminations and all preferences which establish a cause of complaint, but that they must be undue or unjust, and that the existence of preferences can never be overcome. Claims that preferences exist or are undue or unjust, as I have just said, arise from the feeling which everyone has that he desires equal treatment with his neighbor, and that his place desires equal treatment. They are difficult questions. They give the railroad companies a great deal of concern. They are questions between the localities rather than with the railroads, and they are questions which affect the railroads only, as they almost invariably lead to a reduction of their revenue.

The efforts of the traffic officials of the road to meet the necessities of the shippers and to enable their manufacturers and shippers to ship to farther markets all the time are what have led, more, in my belief, than anything else, to the downward course of rates, which has been practically continuous. When you consider the increase in the cost of materials in the past few years, it is not too much to say

that that has been a continuous course. The traffic official is constantly endeavoring to enable his own patrons to reach farther markets. Now, there can not be any question that that encourages competition, enables the consumer to have the benefit of constantly increasing sources of supply, and yet, naturally, when the dealers in the farther markets find that a new element of competition has entered they claim that they are prejudiced, and that the first market is receiving an undue preference.

On this subject it is worth while to see what the Interstate Commerce Commission has said. They say:

In view of their opportunities and the temptations to which their traffic officers are exposed, it is perhaps not too much to say that the obligations of neutrality in this regard are usually observed, and that discriminations of this character are not often the subject of complaint.

That is from the report of the Commission for 1895. They say further:

It is worth observing that some, at least, of the most important controversies involving the rates and methods of railway carriers are rather between competing communities or producing regions than between rival lines of railway. Railway development has extended far beyond the point at which any of the greater systems find their interests so identified with a single community as to feel wholly indifferent to the demands and needs of all competing communities. Indeed, there may be entire sincerity in the contention, on the part of the officers of a great system, that any adjustment which satisfies the rival communities which it serves can not be seriously objectionable from its own point of view. In such degree as this contention may be sincerely advanced the carrier becomes a relatively unimportant factor in the struggles of rival localities.

That is from the report of 1904, page 28. But the difficulty about it is that these struggles constantly lead to the tearing down of the revenues of the carriers, and therefore it can scarcely be said that the carriers are relatively an unimportant factor, from their own point of view, because when the Commission finds that a rate is of such a character as to establish a preference, it never raises a rate, but always reduces one or the other rate. I have often thought that that is a serious constitutional question. When they find, for example, that a rate from A to B is reasonable, but that the rate from C to B is lower, they lower the rate which has already been found to be reasonable—that from A to B—and in that manner they compel the carrier to take what is less than a reasonable rate. It is a question which will arise at some time, and it seems to me raises the question whether the carriers are receiving the returns to which they are entitled.

Mr. SHACKLEFORD. In such a case do you think it would be fair to the public and the producers and the shippers to compel a carrier to raise a lower rate if it were a remunerative rate at the time?

Mr. WILCOX. I think it is taking the property of the carriers without due process of law, to compel it to accept an unreasonable rate in the first instance.

Mr. SHACKLEFORD. Would it not be quite as unjust to compel another carrier to raise a remunerative rate to solve the situation?

Mr. WILCOX. I do not think it would.

Mr. SHACKLEFORD. Would it not be unjust to compel one carrier to divide its traffic with another carrier that could not secure that traffic by fair competition?

Mr. WILCOX. I think it is the constitutional question of taking property without due process of law.

Mr. ADAMSON. If one rate is not unreasonably high, and the other is not unreasonably low, they are both reasonable, are they not?

Mr. WILCOX. Yes, sir; but that does not make the first rate, the first unreasonably high rate, as reduced, unreasonable.

Mr. ADAMSON. And yet it might be sufficient to deter a court or tribunal from compelling a carrier, against its own sound judgment, to depart from a rate which it finds profitable and on which it can hold its business.

Mr. WILCOX. It is a pretty difficult question.

Mr. ADAMSON. I think that is an easy question.

Mr. WILCOX. You think it is an easy question?

Mr. ADAMSON. Yes, sir.

Mr. WILCOX. What is it you want me to answer? Do you want me to answer it?

Mr. ADAMSON. I replied to your suggestion that it might be sufficient to deter a court from compelling a carrier, against its judgment, to raise a rate.

Mr. WILCOX. I think the court would very likely come to that conclusion. But would it be sufficient to prevent it from lowering a rate which the court had found to be reasonable? At best I can not see how. Really, the serious question is how this change will operate as a future system. And now I want to read to the committee a few expressions of the Commission, and in reference to the operation of this system in the future:

To give each community the rightful benefits of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonable, just to both shipper and carrier, is a task of vast magnitude and importance.

That collection of phrases I have no doubt the members of the committee are very familiar with. It first made its appearance in the report of 1893, and has gone on echoing down the corridors of time until its last appearance was in an address which the President delivered before the economic association in Chicago this season. What does it mean. I find sometimes, when I have been sitting up in the lone hours of night with my conscience and a cigar, perhaps, and the Quarles-Cooper bill, this come before me, and I have thought of little Alice in Wonderland when the form of Jabberwocky had been repeated to her, when she said "It sounds very pretty and seems to fill my head with ideas, but I don't know exactly what they are." So it is with this. It says "To give each community the rightful benefits of location." The reasonable rule is that there shall be no preferences.

Mr. ADAMSON. The fundamental error, in my mind, is that it ought to have said "take away from those communities a natural benefit"

Mr. WILCOX. The gentleman differs from the Interstate Commerce Commission immediately. It says "to keep different commodities on an equal footing." What commodities are to be kept on an equal footing? Are molasses and pig iron to be kept on an equal footing, or what does that mean? It says "so that each shall circulate freely and in natural volume." That is to say, that the Interstate Commerce Commission or some other branch of the Government is to

determine what is the natural volume in which commodities are to circulate. Do you think it is possible for anything to determine that except the natural laws of supply and demand, and do you think there would be much profit in an effort of that kind? Suppose anyone were charging a jury in a case where there was no question of facts, and it would be a question of law as to what should be the natural volume in which commodities were to circulate; do you not think you would have difficulty in framing that charge? The expression of the Commission as to commodities circulating freely has an anomalous sound, but I suppose it means keeping them circulating without restraint—without charge.

The Commission goes on in the report for 1895 to say:

No one who understands the intricacies of transportation would care to assert that the determination of a just rate, or the decision as to what constitutes discrimination, is an easy task. To some extent the principles upon which taxation rests must be allowed in fixing a just rate; to some extent the result of the rate upon the development of industries must be taken into the account in all decisions which the Commission is called upon to make; to some extent every question of transportation involves moral and social considerations, so that a just rate can not be determined independently of the theory of social progress.

The committee will observe that there is nothing said there about reasonable compensation to the owners of the railroads, or the revenues of the company. Now, gentlemen, is that practical? Is the fixing of rates in that method one which would be safe? They say "to some extent the principles upon which taxation rests must be allowed in fixing a just rate." But does anyone know what the principles are upon which taxation rests? I think there are about as many as there are States in the Union. I never was able to find that it rested upon anything but the construction of the statutes where the tax was imposed.

Mr. SHACKLEFORD. And the necessity for revenue?

Mr. WILCOX. Yes, or the amount of taxation that they could stand. That seems to be a factor as much as anything. They say, "To some extent the result of the rate upon the development of industries must be taken into the account." That is what traffic officials are always taking into account, the development on their own lines. But here you have one object, that is to develop the industries of the country. If you should develop on one line, you would probably dwarf those industries upon another line. The development of what industries is to be considered? Is there anything definite about that way of putting it?

Again they say, "To some extent every question of transportation involves moral and social considerations." Now, gentlemen, this is a question of taking people's property. Are moral and social conditions to govern? We all, I have no doubt—I know I do—value moral and social considerations at their proper valuation and recognize where they apply; but do they apply to the constitutional guaranty of property?

Again, they say, "so that a just rate can not be determined independently of the theory of social progress." What in the world does that mean? What is the "theory of social progress?" Is it Henry George's theory of social progress or the socialist's theory of social progress, or the Middle Age theory of social progress? What does it mean, anything? It means nothing tangible.

I must hurry along. Again, the Commission says:

Within certain limits, it is good policy for the railway manager to increase his tonnage, even at the expense of reducing the rate per ton. Just how far this rule applies no one can tell.

How far it is good policy to increase the tonnage at the expense of reducing the rate per ton no one can tell. Then they say further:

The merchant who buys an article for a definite price knows when he sells it whether he makes or loses by the transaction; and the manufacturer, as a rule, has a pretty accurate idea of the cost of production, but the railroad operator can not ordinarily say whether he should or should not as a matter of policy take traffic at a certain price.

If that be so, can the lawyers who constitute the Interstate Commerce Commission say so? Can they say whether the interests of the property owners which will be in their hands will be served by taking traffic at a certain price if even the railroad operators can tell it only by certain rules which govern the transaction of business generally? They further say:

The freight rate is a complex problem when applied to almost all competitive traffic. Very few people not acquainted with the subject have any idea how difficult the solution of that problem is.

And then the report for 1908 of the Commission says this:

It is often difficult to say what constitutes a reasonable rate, and more difficult to give in detail the reasons that lead to the conclusion reached; although the Supreme Court of the United States has given certain rules by which to test the reasonableness of transportation charges, and although the Commission has endeavored to apply those rules, yet whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation, they have invariably answered in the negative and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose, and there is at present no other source from which the Commission can obtain such data.

As to that I would say that asking the traffic officials whether they were taking their own property without due process of law seems a little absurd, because the rules which were laid down by the Supreme Court were to prevent property from being taken in invitum without due process of law. A man can give away his own property, and that question does not arise; but when the rates are sought to be made by superior force, then the question does arise, and then the Commission says it is impossible to follow the rules which the Supreme Court has laid down. Now, that is an extraordinary situation. Just imagine, brethren of the bar, what a field of litigation that would be. Because these decisions of the Interstate Commerce Commission will be thoroughly probed, and then it would appear that according to their own statement they had no relation whatever to the rules that the Supreme Court has announced on that subject.

Mr. TOWNSEND. May I ask you a question?

Mr. WILCOX. Yes, sir.

Mr. TOWNSEND. Do you believe that the Government, through a commission, or any other body, should have the right to inquire into the reasonableness of a rate?

Mr. WILCOX. Yes, sir; certainly. I said on the start that I believed in a commission.

Mr. TOWNSEND. That the Commission should have that power?

Mr. WILCOX. Yes, sir

Mr. TOWNSEND. Should they have the right in determining that to inquire into the earnings of the road to determine what the road is earning?

Mr. WILCOX. Mr. Committeeman, I would plant myself on what Judge Harlan said in the case of *Smith v. Ames* on that subject. That is the most thorough statement I know on the subject, and I believe what he said. I will read it if you want to hear it.

Mr. TOWNSEND. You could answer my question if you understand him as you do, just as I have put it to you.

Mr. WILCOX. The earnings of the road?

Mr. TOWNSEND. Yes, sir.

Mr. WILCOX. That is my view, certainly. That is what the case of *Smith v. Ames* said. I wanted to answer your question compendiously by referring to that.

Mr. TOWNSEND. I do not care for you to go into that.

Mr. WILCOX. Taking into account the earnings of the road? I suppose so.

Mr. TOWNSEND. What would be necessary in order to fix a reasonable rate?

Mr. WILCOX. That is a question how far that would control in cases of roads which do not have earnings. There has got to be an original uniformity of rates.

Mr. TOWNSEND. That would involve the question of taxes that you have referred to, whether they were paying a proper proportion of their taxes.

Mr. WILCOX. I do not know whether it would or not; the systems of taxation are so different.

Mr. TOWNSEND. And that would involve a question of the faithfulness of the reports of the railroads as to their distribution of their earnings and operation, and so forth.

Mr. WILCOX. Yes, sir; and would probably involve an inquiry as to what are betterments and what are renewals.

Mr. TOWNSEND. Is it your opinion that the railroads are fair with the people in making those statements of the apportionment of earnings?

Mr. WILCOX. My judgment would be that too many things are called betterments which are really renewals. I do not think that they are conservative enough about it.

Mr. TOWNSEND. You think they are treating themselves unfairly in those reports?

Mr. WILCOX. Yes, sir; every man who makes a report likes to show that he has strengthened the property. In that respect I think they call things betterments which are probably merely renewals.

Mr. TOWNSEND. Now, one more thing, which is not just pertinent to this, but in order to understand your relation to this I will ask you this question: You have been quite interested in opposing the enlargement of the powers of the Interstate Commerce Commission, and especially as representing the principles set forth in the Quarles-Cooper bill?

Mr. WILCOX. Yes, sir.

Mr. TOWNSEND. And you had something to do with getting the withdrawal of indorsements of people who had signed the petition of "Freight?"

Mr. WILCOX. Yes, sir; I had something to do with that.

Mr. TOWNSEND. What did you do in connection with that?

Mr. WILCOX. Well, let me see. Perhaps I ought to say this, that I have always lived in New York, so that I know a number of these gentlemen myself, and I suggested to gentlemen who knew them, whom I did not know, that they should bring the matter to their attention, and made suggestions to them on the lines that I have suggested this morning.

Mr. TOWNSEND. And there was a formal effort made to get them to withdraw their names?

Mr. WILCOX. There was not a formal effort. I think that I have told you what I did. There was one of those concerns which was a shipper on our line, and I had never heard any complaint from them, and I wrote them and asked them whether they had any complaint. That is one of the most important concerns in the State of New York. They wrote that they had not any complaint, and very strongly commended our station agent and said that he was a first-rate man, and they hoped that he would continue there; and they said on further consideration they believed that the legislation proposed would be undesirable, and they did not believe in Government action on these matters.

The way that I came to take that matter up was this: I received from Freight a letter addressed to myself, inclosing a copy of the petition with the request that I would sign the petition and subscribe to the paper. I did subscribe to the paper, and when I read the Quarles-Cooper bill I thought that it was very undesirable. I make no question about saying that; that is what I came here to say. I found also the petition contained a misstatement to the effect that the object of the Quarles-Cooper bill was to restore the Interstate Commerce act to the condition in which it was originally passed. Now, that was an entire misconception, because there had never been any change in the commerce bill, and the result of the judgments of the Supreme Court was to construe it, and we all know that—you are a lawyer, are you not?

Mr. TOWNSEND. A kind of a lawyer.

Mr. WILCOX. Like myself. That did not emasculate the act or eliminate sections or anything of that kind. It construed the act as Congress originally passed it. This petition also stated that the object of the bill was to restore the interstate act to its original condition.

Mr. TOWNSEND. You understood that it was to restore these rate-making powers to the Commission as they have been originally given in the act? You understood it that way?

Mr. WILCOX. It did not say so.

Mr. TOWNSEND. You understood it that way, did you not, that it was to restore these rate-making powers, as the Commission supposed it had those rights, as it has shown by attempting to exercise those powers?

Mr. WILCOX. If you could have explained that as the meaning of the petition I think they would have understood it more fully than it was possible under the circumstances for them to understand it. Have I answered all that you wanted me to?

Mr. TOWNSEND. Yes, sir; thank you.

Mr. WILCOX. The most dangerous thing about this matter, it seems to me, is the provision as to fixing the just relation of rates. Before I take that up, however, I assume that the committee is thoroughly aware now that the bill gives the Commission the power to fix rates, or, as was said in the maximum-rate case, all rates could be fixed in one proceeding. It is therefore inconsistent with the language of the President's message, which is to the effect that it is not desirable to give a general rate-making power to the Commission. It has been claimed in recent publications by Mr. Bacon and Mr. Moseley that nothing of the sort was sought, and yet we have the language of Judge Brewer, holding, in terms, that that would be the necessary effect of this change.

Now, you take the just relation of rates. The illustration of that in the differential case, I believe, has been presented to the committee, where the Commission wrote an opinion saying that the question was how far New York was entitled to its commercial supremacy—how far it was to be permitted to retain it—and stating that the policy of the country was that the trade should be distributed in different ports, and the Commission proceeded to make an award affirming the differentials in part, in the face of that constitutional provision that no regulation of commerce or revenue shall give any preference between different parts of the United States.

In absolute flat disregard of that, just lately, the Commission has said that it is no part of its functions to equalize natural advantages by adjusting rates. So that those varying rules could be applied, apparently, according to the fancy of the Commission, as occasion might arise. In one case it might be held that the commerce of a place like Chicago, for instance, was to be distributed, and in another case it might be held that it was not within the function of the Commission to equalize natural conditions, because it is on record both ways. Suppose it could do this; suppose that it could equalize such advantages? Is there anything that would stop competition more than that? Is there anything that would limit the productive activities of various commercial centers more than the effort to give to each one some little territory in which it had a natural advantage, because it was near at hand, perhaps, and to keep everybody else out? Because that would be the effect of it if such a system could be carried out. I doubt whether it could be, but if it could be carried out it would absolutely limit competition and prevent the process which is going on all the time of developing business, so that manufacturers and carriers can reach farther markets. That will be at an end. So, too, under the Quarles-Cooper bill, a condition of rigidity of rates would arise as soon as the Commission had acted, because the rates under the provisions of that bill can not be changed except by the action of the Commission itself—not by the court even, but only by the action of the Commission.

And that condition would constantly go on. Rates would gradually become fixed everywhere, and the enterprising manufacturer who wanted to reach another market would be shut out from doing so.

The CHAIRMAN. The hour has arrived at which we must adjourn. This committee is not allowed to hold its sessions during the sitting of the House.

Mr. WILCOX. I am greatly obliged to you and the gentlemen of the

committee, Mr. Chairman, for hearing me, and, as I have said, I expect to file a brief with you right away.

Thereupon (at 12 o'clock m.) the committee adjourned until Monday, January 23, 1905, at 10.30 o'clock a. m.

The interstate commerce act—The legislation now proposed is unnecessary and, if effective, would be very dangerous—The remedy for any grievance lies in thorough enforcement of the law rather than in further experimental statutes.

THE SCOPE OF THE INTERSTATE COMMERCE ACT HAS NEVER BEEN DIMINISHED BY THE COURTS.

It is sometimes said that the preliminary debates in Congress indicate an intention that the scope of the interstate commerce act should be either broader or narrower than that which it now has. But it has often been ruled by the Supreme Court of the United States that expressions used in such debates have no force in determining the meaning of statutes—that meaning is to be gathered solely from the language of the statute as finally enacted (3 How., 224). Accordingly, nothing of the sort ever had the slightest bearing upon the meaning of the interstate commerce act. The powers of the Commission which it created were those only which were specified by the language of the statute.

The act provided that rates should be reasonable and there should be no preference, and it was made the duty of the Commission to enforce these rules. Under settled principles of construction these provisions referred to action regarding existing conditions, and not to establishment of rates or regulations for the future. Accordingly, promptly after the act became effective, the Commission decided that it had no power or jurisdiction regarding future conditions. Commissioner Walker said as to the suggestion that the Commission could "construe, interpret, and apply the law by preliminary judgment" (1 I. C. R., 19), that "a moment's reflection will show that no such tribunal could be properly erected. Congress has not taken the management of the railroads out of the hands of the railroad companies. It has simply established certain general principles under which interstate commerce must be conducted." (Id., 20.) Commissioner Cooley said that in case the Commission had preliminary power to suspend the long and short haul provision it "would, in effect, be required to act as rate makers for all the roads and compelled to adjust the tariffs, so as to meet the exigencies of business, while at the same time endeavoring to protect relative rights and equities of rival carriers and rival localities. This, in any considerable state, would be an enormous task. In a country so large as ours, and with so vast a mileage of roads, it would be superhuman. A construction of the statute which should require its performance would render the due administration of the law altogether impracticable, and that fact tends strongly to show that such a construction could not have been intended. * * * No tribunal is empowered to judge for it until after the carrier has acted, and then only for the purpose of determining whether its action constitutes a violation of law." (Id., 280, 281.) Commissioner Schoonmaker said that the Commission had no power in any case to fix rates for the future, but "its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute." (1 I. C. R., 357.) This language was later cited by the Supreme Court (167 U. S., 570) as showing that the Commission at first did not deem itself to be possessed of rate-making power.

After a time the Commission changed its attitude in the matter and made various attempts to regulate future conditions. This course naturally led to litigation. It is frequently said that the Commission exercised this power for ten years without objection or suggestion that its course was unauthorized by law.^a (Annual report of the Commission for 1897, p. 11.) This statement

^aAs for example, too, in *The Transportation Tax*, issued by the Cattle Growers' Interstate Committee, Denver, Colo., 1904, p. 26.

As will be shown below at length, when the Commission made the attempt to establish future rates by wholesale (4 I. C. R., 592), that attempt was promptly resisted in the courts, and as soon as the courts could act the Commission was held to have exceeded its authority. (162 U. S., 184; 167 U. S., 511.) The rules thus laid down by the Supreme Court were foreshadowed at circuit as early as 1889 and 1890. (37 Fed. Rep., 567; 43 Fed. Rep., 37.)

It was settled in 1889, by a judgment of the eminent Judge Howell E. Jackson (37 Fed. Rep., 567), that the Commission had none of the character of a court and its decisions could be enforced only through aid of the judicial tribunals, and in this view the Supreme Court, through Justice Harlan, later concurred. (154 U. S., 485.)

It is interesting to recall the language of Judge Jackson, which was as follows:

"The functions of the Commission are those of referees or special commissioners appointed to make preliminary investigation and report upon matters for subsequent judicial examination and determination. In respect to interstate commerce matters covered by the law, the Commission may be regarded as the general referee of each and every circuit court of the United States, upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and imposed by the act. It is neither a Federal court under the Constitution, nor does it exercise judicial powers, nor do its conclusions possess the efficacy of judicial proceedings." (37 Fed. Rep., 613.)

An effort was made in the Fifty-second Congress (Senate bill No. 892) to change these rules by giving the Commission judicial character, but the effort was not successful. Shortly (in 1894) the Commission sought to fix future rates upon an extensive scale (4 I. C. R., 592) and brought suit to enforce this action. In due course this suit reached the Supreme Court of the United States. A decision upon the subject was first made on March 30, 1896. (162 U. S., 184, 196, 197.) The court said:

"It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider these facts and give them their proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the Commission to be reasonable. * * * Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage to persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at the common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits."

The last sentence was quoted from a case decided by Judge Jackson at circuit on August 11, 1890 (43 Fed. Rep., 37), and affirmed by the Supreme Court in 1892 (145 U. S., 263).

The question was again before the Supreme Court upon May 24, 1897, in an action brought by the Commission. (167 U. S., 479.) Regarding the claim that the Commission had power to fix rates for the future in a case where it had held the existing rate unreasonable, the court said (p. 509): "The vice of this argument is that it is building up indirectly and by implication a power which is not in terms granted." Accordingly it repeated the language quoted just above and said further:

"Our conclusion, then, is that Congress has not conferred upon the Commission the legislative power of prescribing rates, either maximum or minimum or absolute. As it did not give the express power to the Commission, it did not intend to secure the same result indirectly by empowering that tribunal to determine what, in reference to the past, was reasonable and just, whether as maximum, minimum, or absolute, and thus enable it to obtain from the courts a peremptory order that in the future the railroad company should follow the rates thus determined to have been in the past reasonable and just."

In response to the suggestion that this construction of the act rendered the Commission useless, the court said (p. 506):

"But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has,

and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but in all things that equality of right which is the great purpose of the interstate-commerce act shall be secured to all shippers. It must also see that that publicity which is required by section 6 is observed by the railroad companies. Holding the railroad companies to strict compliance with all these statutory provisions and enforcing obedience to all these provisions tends, as observed by Commissioner Cooley in *In re Chicago, St. Paul and Kansas City Railway* (2 Int. Com. Com. Rep., 231, 261), to both reasonableness and equality of rate contemplated by the interstate-commerce act."

In these constructions of the interstate-commerce act all of the justices of the Supreme Court concurred at various times, with the exception of Justice Harlan.

It has since been pertinaciously asserted that these decisions either read into the act something which was not in it or read out of it something which it originally contained. Apparently in order to lend emphasis to this claim, terms grotesque in the discussion of judicial decisions have generally been employed. Thus a recent writer in the *North American Review* speaks of the Supreme Court as having "annulled" and "set aside" the act and "eviscerated" the Commission; it has frequently been said that the court "emasculated" the statute; the Commission speaks of the courts having made "discoveries" contrary to the general understanding (*Annual Report for 1897*, pp. 6 & 9), by which sections of the statute were "eliminated" and "stricken from the act" (*Id.*, p. 43), and refers to the effect of these adjudications "in defeating the purposes of the act" (*Annual Report for 1898*, p. 5; *Annual Report for 1901*, p. 5), and the Commissioner of Corporations, in his recent report, says that "the force of the interstate-commerce act has been seriously weakened by judicial interpretation."

These fashions of speech, if serious, are founded upon misconception of the processes of jurisprudence. The act contained no provisions in terms authorizing action in regard to future conditions. Accordingly, the Commission promptly held that it had no power in that regard. Thereafter the Commission adopted a contrary view and sought to exercise control over future rates. Thus it became necessary for the Supreme Court to decide which view was sound. It decided that the view first adopted by the Commission was the correct construction of the statute. This, of course, settled by authority the meaning of the act as originally passed. It took nothing therefrom and added nothing thereto. The court decided merely that nothing contained in the statute as it was passed in 1887 conferred any power regarding future rates; no more and no less.

It is therefore idle and foolish to speak of these decisions as having in any way qualified the act as Congress passed it.

PROPAGANDA FOR FURTHER LEGISLATION.

The action of Congress as thus finally construed was not accepted in all quarters as sufficient. A propaganda was at once set on foot for further legislation increasing generally the powers of the Commission. The statement has often been made that this movement originated largely with and has been kept alive by the Commission itself. This statement is supported by the facts that in each of its annual reports since these decisions of the Supreme Court the Commission has vigorously criticised those rulings and urged legislation for the purpose of enlarging its powers, and has generally submitted drafts of statutes for that purpose; that at each session of Congress one or more acts of the sort have been introduced, with its approval; that members of the Commission have appeared before Congressional committees and strongly advocated such legislation, and have urged the same in numerous articles, addresses, and interviews; that one of the Commissioners attended and urged such action and submitted a draft of an amended statute at the formation upon November 22, 1899, of what

is now known as the Interstate Commerce Law Association—the organization which is principally active in support of the legislation now proposed, and that by formal order on December 8, 1899, the Commission instructed its secretary to “cooperate assiduously” with any mercantile or agricultural organizations in efforts to secure the result sought and especially the passage of the bill to which reference has just been made (Senate bill 1439, 56th Cong., 1st sess.).

By a circular letter dated February 3, 1900, the secretary of the Commission accordingly stated that said bill was designed to give to the Commission “the authority intended to be conferred by Congress when the bill was originally enacted; that the shippers of the country, with the approval of the Interstate Commerce Commission, seek such an amendment as will empower the Commission to proceed on the lines and to the ends contemplated by the original act; that it is respectfully suggested that (the person addressed) take action expressing (his) approbation and support to the Senators and Representatives from (his) State, and to the Committees on Interstate Commerce, and that the secretary would be pleased to be advised of any action taken in the premises.” Such action has followed naturally from the view that the “purpose of the act was to provide a means by which the public could array itself against the carrier.” (Annual Report for 1897, p. 19.)

The Commission, too, has every year taken Congress and the courts severely to task for failing to agree with its views. The decisions regarding the statute have rendered “its enforcement as a remedial statute practically impossible.” (Annual Report for 1897, p. 6.)

“Nearly every essential feature of that act has failed of execution.” (Id., p. 37.)

“By virtue of judicial decision, it (the Commission) has ceased to be a body for the regulation of interstate carriers.” (Id., p. 51.)

“The requests of the Commission for needful amendments have been supported by petitions, etc. * * * yet not a line of the statute has been changed and none of the burdensome conditions which call for relief have been removed or modified.” (Annual Report for 1899, p. 5.)

“Until further legislation is provided the best efforts of regulation must be feeble and disappointing.” (Id., p. 5.)

“This (the power to make future rates) is the point to which the attention of the Congress has been repeatedly called; this is the defect in the regulating statute which demands correction. In previous reports this question has been frequently and fully discussed. We have commented at length upon the weakness and inadequacy of the law as its provisions have been construed by the courts.” (Annual Report for 1903, p. 12.)

“The popular demand may eventually take that form (the original rate-making power) under the stress of continual delay in remedying ascertained defects in the present plan of regulation.” (Annual Report for 1904, p. 8.)

It would be impossible to state in detail the efforts which, incidentally to this propaganda, have been made to stimulate public feeling. One or two instances must suffice. Thus the expression “transportation tax” (Annual Report for 1900, pp. 9, 13, 24; Annual Report for 1903, pp. 14, 15, 17) has been habitually applied to the charges of the carriers, apparently for the purpose of arousing the same sort of prejudice against the payment of such charges as is felt by many against the payment of taxes. The expression, of course, has no more accuracy than would such an expression as the “wheat tax,” or the “beef tax,” or the “corn tax,” or the “clothing tax,” or the “newspaper tax” have in describing what is currently paid for those articles of general use. The individual consumer has no more to do with fixing the prices thereof than with fixing the charges of the carriers. And those prices are far more of a universal burden than are transportation charges; for, as the Commission said in its annual report for 1900 (p. 9), “generally a slight increase in the rate does not materially affect the price to the consumer;” and, again, in its annual report for 1903, “so, too, with the great volume of traffic, the cost of transportation is not a sufficiently large factor in the total cost of the article to the consumer, so that a reduction of the freight rate would stimulate consumption to a sufficient degree to justify the reduction” (p. 16).

“Perhaps in most instances the freight rate is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rate.” (Id., p. 32.)

But the general body of the consumers creates the demand which settles the amount of the transportation charge quite as much as the price of the goods

transported. Indeed, the most potent cause of the downward course of rates in the past has been the commercial necessities of shippers and consumers and the efforts of traffic officials to meet them.

So, too, the Commission, in its annual report for 1903 (pp. 13-15), and one or more of its members in various published statements, have asserted with emphasis that rates as a whole have greatly increased. In an article recently published in the *North American Review* one of the Commissioners goes so far as to say: "Within the last five years rates upon every important commodity in every section have been advanced. * * * We are confronted with increasing monopoly, with advancing freight rates, and with no probable relief in sight." Yet in 1898 the average freight rate per ton per mile was 0.753 cents or 7.53 mills, and in 1903 it was 0.763 cents or 7.63 mills (*infra*, p. 14). So that the increase upon which are founded these lugubrious views amounted, in a time of generally rising prices, to ten thousandths of a cent per mile, or 10 cents per ton for each thousand miles. Moreover, as will shortly be shown, almost no cases of unreasonable rates have ever been established before the Commission and none whatever in the courts, and the cost of materials between 1898 and 1903 rose out of all proportion to transportation charges.

Still further, on March 11, 1904, the Senate requested the Commission to report the principal changes in tariff rates since June 30, 1899, with "an estimate of the effect of such changes upon the gross and net revenues of the railway corporations during each fiscal year since then * * * and also to report the changes in cost of operation and maintenance of the railways for said years." The Commission reported on April 7, 1904, that, comparing 1899 with 1903, there was, from this cause, an addition to the gross earnings amounting to \$155,475,502. It omitted to answer the request for information regarding the net revenues and cost of operation and maintenance on the ground "that the returns for the fiscal year 1903 have not yet been compiled, and the figures relating to the cost of operation and maintenance for that year must, therefore, be omitted, * * *" but said that its "method of computation was not without value as indicating enormous additions in recent years to the cost of railway transportation to the people of the United States."

Yet the figures as to operating expenses were in possession of the Commission quite as much as those as to gross earnings; they were contained in the same official reports of the railway companies to the Commission. In the preliminary report of their statistician, dated December 12, 1903, and again in the regular annual report of the Commission for 1903, dated December 15, 1903, those figures had already been stated for 98 per cent of the mileage of the country at \$1,248,520,483, which was an increase of \$620 per mile over 1902. The advance in operating expenses from 1902 to 1903 is stated in the report of the statistician for 1903 (p. 85) to have been \$141,290,105 and in the report of the Commission for 1904 (p. 112) as \$141,193,494, and the increase in taxes and interest was \$13,262,391, making the total increase in expense of the business in that one year \$154,455,885. It will shortly be shown, too, that the Commission's figures indicated that from 1899 to 1903 the increase in both gross earnings and net revenue had not been as great relatively to the volume of business as the increase in expenses of operation. These facts the Commission did not mention, although the Senate resolution called for information on the precise subject of operating expenses and net revenue.

The Commission's annual report for 1900 (p. 9) stated that "generally a slight increase in the rate does not materially affect the price to the consumer," but that "since every such advance adds to the net revenues of the railway, a very slight increase in all rates, if it should be permanently maintained, would enhance enormously the value of railway securities."

The view of this report of March 11, 1904, apparently was that any such result would necessarily be a calamity. The results for 1904 show how completely increasing expenses have exhausted increased gross earnings of the railroads. Their gross earnings increased, over 1903, to the amount of \$65,188,714, but the net earnings decreased \$6,393,265, as compared with the previous year. Operating expenses increased \$250 per mile over 1903, and the operating ratio increased from 66.16 per cent to 67.75 per cent of gross earnings, or an increase of 1.59 per cent on the entire amount of gross earnings. (Annual Report for 1904, p. 106.)

It is much to be regretted that the action has been taken which is indicated by these illustrations. The shippers and the carriers stand in relations to each other very similar to those of merchants and their customers. The effort of all parties interested in the general welfare should be toward closer and more har-

monious relations between them. In investigating grievances presented to them and bringing the parties together, the Commission has done a great and beneficial work, and that has been and always will be by far its most important function. (Annual Report for 1893, p. 14; Annual Report for 1895, p. 48; Annual Report for 1897, pp. 32, 51.) In its Annual Report for 1904, pages 36, 73, it appears that 487 complaints were filed with the Commission, of which 425 were settled by correspondence with the carriers and only 62 were made the subject of contest, "the greater number of these complaints having been settled to the satisfaction of all concerned" (p. 73). It is unfortunate that the dignity and usefulness of the Commission in this regard have been, in a measure, compromised by grasping for powers to control the future such as are possessed by no branch of the Government, and probably could never be successfully exercised.

PROPOSITIONS TO INCREASE THE COMMISSION'S POWER, INCLUDING PENDING LEGISLATION.

The changes in the law which have been urged upon Congress have varied considerably from time to time. Shortly after the Supreme Court decisions above stated a bill was introduced substantially conferring general original rate-making power upon the Commission. When this failed a bill followed providing that the carriers should make the rates in the first instance and the same should thereafter be subject to general revision by the Commission, which would thus really have been the rate makers. On the failure of this, it is now proposed that when the Commission has decided that an existing rate offends against the statute it shall have power to establish a rate for the future, thus giving it complete control over all rates. This proposition is embodied in the bill now pending before Congress known as the Quarles-Cooper bill, from the names of the Senator and Representative by whom it was introduced.

The provisions of the pending bill are in brief as follows:

(1) Where the Commission has made an order declaring any rate, regulation, or practice to be unjustly discriminative or unreasonable, and declaring what rate, regulation, or practice would be just and reasonable, and requiring them to be substituted therefor, such order shall become operative and be observed by the parties at the expiration of thirty days, or in case of proceedings to review, at the expiration of sixty days; but such order may at any time be modified, suspended, or revoked by the Commission upon full hearing of all parties in interest.

(2) In case the rate substituted by the Commission is a joint rate, and the carriers fail to agree as to division thereof, the Commission may make the division; moreover, the Commission may establish "the just relation of rates" to or from common points on the lines of the carriers and prescribe the rates to be charged by either or all of the parties to or from such common points when the carriers fail to agree.

(3) Every such order as to its justness, reasonableness, and lawfulness shall be reviewable by the circuit courts on petition filed within twenty days. Thereupon the record before the Commission shall be certified to the court. The court shall proceed to hear the case on this record; or, in its discretion, may, in such manner as it shall direct, cause additional testimony to be taken. If, after hearing, the court shall be of opinion that the order was made under some error of law or is, upon the facts, unjust or unreasonable, it shall modify, set aside, or annul the same by appropriate decree; otherwise the petition shall be dismissed. Pending the review the court may, if in its opinion the order is clearly unlawful or erroneous, suspend the same. Within thirty days after rendition of any final decree of the circuit court, any party may appeal to the Supreme Court, but there shall be no stay on appeal.

(4) The defense of all such cases shall be carried on by the United States attorney, under the direction of the Attorney-General, and the Commission may with his consent employ special counsel. If any party bound thereby shall neglect to obey or perform any order of the Commission, obedience thereto shall be summarily enforced by writ of injunction or other proper process, mandatory or otherwise, which shall be issued by any circuit court upon petition of the Commission or any party interested, accompanied by a certified copy of the order and evidence of the violation, and in addition the offending party shall be subject to a penalty of \$5,000 per day recoverable by the Commission in an action of debt for the use of the United States.

These provisions are certainly both novel and drastic. The burden is very strongly upon those who urge such methods of dealing with the greatest indus-

trial interest of the country to establish that (1) they are required by present conditions; (2) they are judicious as a future system; (3) they are warranted by the Constitution of the United States, and (4) they would be likely to accomplish the desired results. But the affirmative can be established as to not a single one of these propositions.

(1) THERE IS NOTHING IN PRESENT CONDITIONS WARRANTING THESE DRASTIC INNOVATIONS.

The substantive provisions of the act are that (a) rates shall be reasonable and (b) rates shall not discriminate unjustly and there shall be no undue or unreasonable preference between persons or localities or classes of traffic. (162 U. S., 197.) The former provision concerns the public generally and the latter the persons or localities directly affected. (43 Fed. Rep., 48.)

(a) *The existing rates are reasonable in themselves.*—The past course of freight rates throughout the country has shown that there is no ground for complaint in this respect. It has been as follows, according to official figures, using those of the Interstate Commerce Commission since it was established. It should be borne in mind that these figures include local as well as interstate business, and that if the two were separated the interstate rates would be considerably less.

The average rate per ton per mile was, in—	Cents.
1870	1.990
1882	1.240
1887	1.030
1888	1.001
1889	.922
1890	.941
1891	.895
1892	.898
1893	.879
1894	.860
1896	.839
1896	.806
1897	.798
1898	.753
1899	.724
1900	.729
1901	.750
1902	.757
1903	.763

Thus the average in 1870 was more than two and one-half times that in 1903. The freight earnings for 1903 were \$1,338,020,026. (Annual Report for 1904, p. 111.) On the basis of 1870 they would have been approximately \$3,408,497,432. Upon the basis of 1870 the gross freight earnings would, therefore, have been greater by \$2,070,790,646 than they in fact were in 1903. When the Interstate Commerce Commission was established, in 1887, the rate was 1.03, and in 1903 it was 0.763—a difference of nearly 26 per cent. If the rates of 1887 had applied to the traffic of 1903 the earnings would have been about \$468,109,714 greater than they were in fact. Ten years ago, in 1893, the rate was 0.878, and in 1893 it was 0.763—a difference of 13 per cent. If the rates of 1893 had been applied to the traffic of 1903 the earnings would therefore, have been about \$201,620,288 greater than they were in fact.

Upon the general course of rates the following remarks of the Commission are pertinent: "Where changes of any importance have taken place in the freight rates of any section, either for local or competitive traffic, in nearly all cases lower rates are now charged than prior to the date of the act to regulate commerce." (Annual Report for 1894, p. 50.)

"Only from an extended inquiry would it be possible to accurately estimate the total reduction effected since the passage of the act to regulate commerce, but that it has been very considerable is well known. * * * Comparing the amounts received by the railways for transportation with amounts which they would have received on the volume of traffic carried from 1889 to 1893, if the average receipts per mile for 1888 had been maintained during the subsequent five years, it appears that the public would in such case have paid for freight and passenger transportation by railroad from 1889 to 1893, inclusive,

\$525,459,587 more than was actually paid for such transportation during that period." (Id., p. 51.)

The foregoing figures as to the rates for each year show that the downward course of rates has continued since these remarks were made.

As already said, some comment has been made upon the fact that between 1899, the lowest point ever reached, and 1903, in a time of generally rising prices, the mileage rate increased thirty-nine hundredths of a mill, or thirty-nine thousandths of a cent. In reply to a resolution of inquiry from the Senate the Commission reported in March, 1904 (Senate Doc. No. 257), that, comparing 1899 with 1903, this increased gross earnings, in the amount of \$155,475,502, but professed its inability to say how much it had added to net earnings. Yet the Commission's final report for the year ending June 30, 1903, proved that this had not increased net earnings at all relatively to the volume of traffic. The operating expenses established thereby showed that, comparing 1899 with 1903, gross earnings per mile increased 31.1 per cent, while operating expenses increased 34 per cent; that the operating ratio of expenses to earnings increased from 65.24 per cent to 66.16 per cent; that the number of employees increased from 928,924 to 1,312,537, namely, 383,613, or 41.3 per cent, and their compensation from \$522,967,896 to \$775,321,415, namely, \$252,353,579, or 48.2 per cent. From 1902 to 1903, alone, operating expenses, taxes, and interest increased \$154,455,885. (Annual Report for 1904, p. 112.) The figures for 1904 show that, comparing with the previous year, gross earnings increased \$65,186,714, but net earnings decreased \$8,393,205; that operating expenses increased \$250 per mile; that the operating ratio rose from 66.16 per cent to 67.75 per cent, or 1.59 per cent of the entire gross earnings, and that the operating ratio was 2.21 per cent of the entire gross earnings above the operating ratio of 1899. (Annual Report for 1904, p. 106.) These figures show that the slight increase in rates from 1899 to 1903 has been totally absorbed by the increase in expenses of operation.

It is interesting, in this connection, to notice a comparison made by the Commission between the business of 1897 and that of 1902, as follows:

"As the rates, broadly speaking, were about the same in both years, it follows that the large increase in earnings resulted mainly from the increased volume of traffic." (Annual Report for 1902, p. 5.)

The mileage rate in 1897 was 0.798 cent and in 1902 was 0.757 cent. The difference was, therefore, 0.041 cent, and the Commission described the rates as "about the same." But in 1899 the mileage rate was 0.724 cent and in 1903 the rate was 0.763 cent. The difference, therefore, was 0.039 cent, or precisely 0.002 cent—two one-thousandths of a cent less than that when the Commission had described the rates as "about the same." Yet the Commission spoke of the latter difference as establishing "enormous additions in recent years to the cost of railway transportation." (Senate Doc. No. 257.) When the difference in rates was 0.041 cent they were described as "about the same;" a slightly smaller difference amounting to 0.039 cent can not, therefore, be consistently described as having made "enormous additions to the cost of transportation."

Again, the average rate in 1897 was 0.798; in 1899, by reason of unfavorable commercial conditions, but especially of excessively low rates on bituminous coal, the average rate declined to 0.724; in 1903 it rose to 0.763—not as high as it had been six years previously, and an increase of 0.039 cent. This fluctuation clearly came within the expression of the Commission that "when reductions have been made on account of commercial depression, it is difficult to see why corresponding advances may not properly be made with the return of business prosperity." (Annual Report for 1903, p. 48.)

Indeed, there has been no such rise in railway rates as has occurred in the case of commodities generally. The recently published bulletin of the Department of Labor (No. 51), with reference to the general course of prices, shows that, taking 100 as the average for the period from 1890 to 1899, the price of all commodities in 1902 stood at 112.9, or 12.9 per cent above the average of the preceding decade. Applying the same treatment to railway rates, they stood in 1902 at 90.2, or 9.8 per cent below the average of the preceding decade. This shows that railway rates had greatly declined, while prices in general had greatly advanced.*

The rates are about one-third the average in England and France, and about

* This has been conclusively demonstrated in pamphlets recently published by Mr. H. T. Newcomb, of Washington, and Mr. Slason Thompson, of Chicago.

one-half the average in Germany. A slight effort has been made to discredit the mileage basis as a proper test; the claim made in that connection is that the average has been affected by a disproportionate increase of low-grade freight. The suggestion that in a country constantly developing industrially, raw materials increase disproportionately to finished products is manifestly without merit. Accordingly, the facts are to the contrary. In 1890 the percentage of low-grade freight was 76.81 of the whole; but in 1902 it decreased to 75.87, and the higher-class commodities correspondingly increased. The mileage basis is generally accepted as the only practicable standard for measuring general conditions. "The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable," although not absolutely controlling upon individual cases where circumstances are exceptional. (Annual Report for 1899, p. 87.) It may be added that the reductions in rates have been approximately similar in the different parts of the country.

Very few substantial controversies have ever arisen regarding the reasonableness of rates, and the Commission has frequently stated, in substance, that there is no ground therefor. It has from time to time discussed in its reports "unreasonably low rates." (Annual Report for 1893, pp. 38, 39, 220, 221; Annual Report for 1894, p. 60; Annual Report for 1897, pp. 24, 25.) In its annual report for 1893 the Commission stated that "to-day extortionate charges are seldom the subject of complaint (p. 12). * * * We are not troubled with the question (under consideration in England) that rates * * * are too high. (Id., p. 17.) It is significant that during the period of commercial development and railroad extension, which have brought communities into such close business relations and made slight differences in transportation rates on competitive commodities a matter of serious import, there has been, under the operation of the interstate-commerce law, a steady decrease of complaints based on charges unreasonable in themselves. The concession is quite general among shippers that, with some exceptions, rates as a whole are low enough, and they often express surprise that the service can be rendered at prices charged. (Id., pp. 218, 219.) Traffic for very many competing localities is being carried at rates which do not yield a due proportion of the necessary net revenue which carriers must have." (Id., p. 221.)

In its annual report for 1897 the Commission said (p. 14):

"Rates to competing and distributing centers are not for the most part unreasonably high. They are frequently quite low. * * * Many rates in this country are undoubtedly too low." (Id., p. 2.)

These facts are of general application, because nearly every city in the country of any "considerable size is both a commercial and a railroad center, therefore a competitive point in both respects." (Annual Report for 1896, p. 39.) In its annual report for 1898 (p. 27) the Commission said: "It is true, as often asserted, that comparatively few of our railway rates are unreasonable in and of themselves—that is, without any reference to other charges made by the same carrier or to those of other carriers"—but they may operate to create a preference between localities. * * * "The cases are exceedingly rare in which unreasonableness has been found merely from the amount of the rate itself as laid upon the particular traffic and the distance it was carried" (p. 27).

On March 18, 1898, the chairman of the Commission testified before the Senate Committee on Interstate Commerce that the question of excessive railroad charges—"that is to say, railroad charges which in and of themselves are extortionate—is pretty much an obsolete question." At that time the rate per ton per mile was within one one-hundredth of a cent of that in 1903, when the chairman described the rates as having made "enormous additions to the cost of railway transportation." The foregoing table of rates in each year shows that since these numerous statements were made the rates have been and now are much lower.

Accordingly, litigated cases in which rates have been shown to be unreasonable in themselves are practically unknown. In reply to a resolution of inquiry passed by the Senate on April 16, 1900, the Commission reported (Senate Document No. 319, 56th Cong., 1st sess.) regarding contested cases which had been before it during ten years prior to that date. It appeared from this report that during that time it had found very few cases of unreasonable rates. As the chairman said, that question had become "obsolete." In 1900 and 1901 there were but three cases of unreasonable rates sustained by the Commission. An independent examination shows that from 1887 until the present time the Commission has found 26 cases of rates unreasonable in themselves, or about one and one-half annually. Further than this, not one of these decisions was

sustained by the courts, and there has not been a single case of rates unreasonable in themselves established in the courts since the Interstate Commerce act was passed.

The record, therefore, proves clearly that the provision of the act that rates shall be reasonable in themselves has been fully observed. The remedies provided by the act have shown no insufficiency. There are no facts establishing the necessity of further power for this purpose in the Commission. The Commission itself suggests no such facts. Even as to the advances claimed to have been made since 1899, amounting to thirty-nine thousandths of a cent per ton per mile, it does not show that they have been unwarranted or excessive. In its annual report for 1899 it said: "It is not intended to intimate that these advanced rates are unlawful," but "the injustice which may result must be without available redress" (p. 8). In its report for 1903 the Commission said: "It would be both unwise and unjust upon the part of the public to prevent them, if they are reasonable under all the circumstance (p. 15). * * * If they are just and reasonable, they ought not to be prevented" (p. 17). So, too, in a recent article in the *North American Review*, to which reference has been made, one of the Commissioners said: "I do not charge that any part of this is unjust, but that some way should be devised by which the reasonableness of these charges should be passed upon by the Government."

The claim is, therefore, not that any injustice has been done in respect to reasonableness of rates—there is no one asserting that he has been damaged and the Commission does not assert the existence of any injustice and has never taken action against the rates thus criticised—but merely and baldly that rates generally should be fixed by the Government. (Annual Report for 1898, pp. 20, 24; Annual Report for 1900, p. 21.) That claim is put forward without support of anything save the opinion of the Commission. As no injustice is shown arising from the present method, such expressions of opinion can not be deemed to warrant such a fundamental change.

(b) *The lawmaking power has dealt fully with preferences between individuals.*—Preferences between individuals have been alleged to arise principally if not wholly from secret rebates. There has been much resounding talk upon this subject, yet here, too, the record both of the Commission and the courts embraces few adjudicated cases, when the extent of the railway traffic of the country is considered, and nothing further upon this subject can be accomplished by statutory enactment. "The power of the statute in this direction was practically exhausted in creating the offense. When that was done, when certain acts were declared misdemeanors, the subsequent perpetrators of those acts became at once liable to criminal prosecution in like manner and by the same agencies as other offenders. Nor can Congress provide any summary or exceptional methods for preventing or punishing this class of transgressions. * * * Theoretically, at least, the existing system of laws applicable to the wrongdoing now referred to is complete and ample. It is not lacking in strength or certainty." (Annual Report for 1893, p. 7.)

"No amendment of this statute, therefore, is necessary or suitable with the view of giving greater power to the Commission in enforcing its penal provisions." (Id., p. 8.)

In addition to this if secret rebates existed, rates made by the Commission would be as much subject thereto as any others; so that conferring rate-making power upon the Commission would not be an appropriate or effective remedy.

However, in 1903 the Elkins Act was passed without opposition by any interest, under which the Commission has power to obtain injunctions from the courts prohibiting secret rebates or rate cutting. This was a step in the right direction, as it provided for direct application by the Commission to the courts to enforce the act. It is conceded that the Elkins Act has been generally effective. In its annual report for 1903 (pp. 10, 11), the Commission said:

"No one familiar with railway conditions can expect that rate cutting and other secret devices will immediately and wholly disappear, but there is basis for a confident belief that such offenses are no longer characteristic of railway operations. That they have greatly diminished is beyond doubt, and their recurrence to the extent formerly known is altogether unlikely. Indeed it is believed that never before in the railroad history of this country have tariff rates been so well or so generally observed as at the present time. * * * In its present form the law appears to be about all that can be provided against rate cutting in the way of prohibitive and punitive legislation; unless further experience discloses defects not now perceived, we do not anticipate the need of further amendments of the same character and designed to accomplish the same purpose."

In its annual report for 1904 (p. 6), the Commission has just said:

"As to that branch of regulation which deals with the publication and invariable application of tariffs, the act as amended by the Elkins law of February 19, 1903, appears to be operating successfully as applied to carriers subject to its provisions."

So, too, one of the Commissioners in the article in the North American Review, to which reference has been made above, has said that "the effect of the Elkins bill and the injunction proceedings has been to secure the maintenance of rates; that condition will probably continue."

Secret rebates and preferences to individuals have, therefore, been fully dealt with, so far as concerns the lawmaking power. If they reappear, it can be due only to failure by the executive branch of the Government to enforce the existing statutes.

(c) *The matter of alleged preferences between localities and classes of traffic is much exaggerated; such claims will always exist, and the present statute furnishes ample means of dealing with them.*—Nothing covered by the substantive provisions of the interstate-commerce act remains to be considered save the matter of alleged unjust or unreasonable discriminations or preferences between localities and classes of traffic. This is the matter with which the contested cases before the Commission are principally concerned. It is important to remember that, in the language of the Supreme Court:

"It is not all discriminations or preferences that fall within the inhibition of the statute; only such as are unjust and unreasonable. (145 U. S., 284.) Commerce, in its largest sense, must be deemed to be one of the most important subjects of legislation, and an intention to promote and facilitate it, and not to hamper or destroy it, is naturally to be attributed to Congress; the very terms of the statute that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, or corporation, or locality must not be undue or unreasonable, necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers should be considered by a tribunal appointed to carry into effect and enforce the provisions of the act. (162 U. S., 218.) The mere circumstance that there is, in a given case, a preference or an advantage, does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act." (162 U. S., 220.)

Claims that preferences exist and that they are unreasonable arise from the spirit of business rivalry, which is always natural, and from the general desire to secure equal advantages with others. Indeed, it may be said of the shippers, with very rare exceptions, that they do not deem the rates too high, and do not wish to force them unreasonably low, but wish merely to secure equality of treatment.

"Shippers mainly agree that unstable rates are injurious to business industries and to commerce generally. They claim that reasonable rates that are stable are better than sporadic low rates that are below what is just and reasonable." (Annual Report for 1893, p. 39.)

"The rate is of very little consequence to the merchant, provided it is the same to his competitors as to himself." (Annual Report for 1897, p. 18.)

As the New York Board of Trade and Transportation said in its recent report upon the subject:

"If the carriers are held rigidly to their tariff rates, it matters not much what those tariffs are if all shippers are charged and required to pay alike, and excessive tariff rates are no longer to be accounted with to the same extent as formerly."

The efforts of traffic officials to meet the necessities of shippers and consumers in these regards have had more to do than any other cause with the reduction of rates and their proper adjustment as between different localities. That will continue to be the case.

"In view of their opportunities and the temptations to which their traffic officers are exposed, it is perhaps not too much to say that the obligations of neutrality in this regard are usually observed, and that discriminations of this character are not often the subject of complaint." (Annual Report for 1895, p. 17.) "The carriers are better qualified to adjust such matters than any court or board of public administration and, within the limitations suggested, it is safe and wise to leave to their traffic managers the adjusting of dissimilar

circumstances and conditions to their business." (Circuit court of appeals cited in Annual Report for 1896, p. 32; also, 5 I. C. R., 697.)

"It is worth observing that some, at least, of the most important controversies involving the rates and methods of railway carriers are rather between competing communities or producing regions than between rival lines of railway. Railway development has extended far beyond the point at which any of the greater systems finds its interests so identified with a single community as to feel wholly indifferent to the demands and needs of all competing communities. Indeed, there may be entire sincerity in the contention on the part of the officers of a great system that any adjustment which satisfies the rival communities which it serves can not be seriously objectionable from its own point of view. In such degree as this contention may be sincerely advanced the carrier becomes a relatively unimportant factor in the struggles of rival localities." (Annual Report for 1904, pp. 28, 29.)

But if these struggles are permitted to constantly pare down the carrier's revenue, they are a most important factor in the success of the carrier's business.

This demand for absolute equality among localities can never be entirely satisfied. If under any conceivable form of statute the Commission could accomplish this it would still be very questionable whether that result would be altogether desirable, as it would tend to destroy the active spirit of enterprise which is necessary to commercial success.

"It is idle to look forward to an adjustment of rates which, as applied to localities and differently circumstanced persons, will bear no heavier upon one than upon another. Such mathematical equality is manifestly unattainable through human endeavor. Not even common control of all railways through consolidated ownership or Government purchase could accomplish such a task of equalization for thousands of places and millions of persons. Certainly the much-vaunted theory of uniform charges for all traffic would, under the greatly diversified conditions which now prevail throughout the country, have the opposite effect and inflict greater discriminations than arise under the existing general practice of fixing charges which attract traffic to the various lines. Uniform rate per mile on all traffic for any distance would arbitrarily limit commerce to sections and greatly restrict production." (Annual Report for 1893, p. 216.)

"Trade is no longer limited to circumscribed areas; distance hardly ever bars the making of commercial bargains between widely separated parties, and almost every article of commerce finds the competing product of another region in any place of sale. The consequence is that products of the farm, the forest, the mill, and the mine are continually demanding from carriers rates adjusted to values in particular markets. It is this competition of product with like product, of market with market, that has induced carriers, in their eagerness to increase the values of their traffic, to continually reduce their rates to market points. Such competition is the competition of commerce itself; the strife between competing industries which the public interest demands should be left free from fettering laws and uncontrolled by restraining combinations." (Id., p. 219.)

As an illustration may be quoted what the Commission has said regarding rates upon flour:

"To an extent the rate upon flour to the foreign market must be higher than that upon wheat. This is decreed by physical conditions which no statute and no commission can alter." (Annual Report for 1901, p. 16.)

Moreover, in States where railroad commissions have power over future rates, questions of alleged discriminations between localities and classes of traffic are as frequent and acute as ever.

Like all commercial questions, these matters are best settled between the parties. The foregoing expressions show that the carriers, in general, use their best efforts to adjust them properly. And the past record proves that the remedies provided by the interstate-commerce act have not been insufficient to enforce its provisions in this regard. The Commission's report to the Senate of 1900 (Senate Doc. No. 319), to which reference is made above, showed that during the preceding ten years it had sustained only 31 cases of discrimination between localities or classes of traffic, and of these only 4 were sustained by the courts, which was about one for every two and one-half years, and 3 of these were subsequently reversed. Indeed, it will shortly be shown that since the passage of the act contested cases of all sorts have been comparatively few

number, and that, with two exceptions, the Commission has been reversed in all of its decisions as to rates which have been passed upon by the courts.

It is very evident, therefore, that the changes in the statute now urged are not required by present conditions and would not remedy anything objectionable therein. Considering that the subject-matter is so vast, the provisions of the act have been very closely observed.

(2) THE CHANGE PROPOSED IS NOT DESIRABLE AS A FUTURE SYSTEM.

Nothing can be gained by comparing this country with others. In many other countries the railroads are largely owned by the government, and the principal object of controlling rates is to prevent the private roads from making lower rates than the government roads; the matter is really a branch of the system of taxation. The result is that the rates are much higher than here and, still further, pooling is recognized as lawful, and in some jurisdictions compulsory, so that the roads participate proportionally in these high rates. Even in England, where the roads are privately owned, the rates are about three times as high as they are here. In addition, half the railroad mileage of the world is in this country, so that there is little profit in considering methods applying throughout the world to the other half of such mileage, under conditions and systems of government varying almost totally from those prevailing here. So, too, there is nothing in the illustration often employed of the supervision exercised by this country over its national banks. (Annual Report for 1895, p. 62.) That supervision is entirely in the interest of the stockholders and depositors and not for the purpose of limiting or in any way controlling the charges or earnings of the banks. The system now proposed is anomalous, and must be judged upon its own merits.

The views of the Commission in reference to the operation of such a system are expressed to some extent in its annual reports.

"To give each community the rightful benefits of location, to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonable, just to both shipper and carrier, is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation." (Annual Report for 1893, p. 100.)

"No one who understands the intricacies of transportation would care to assert that the determination of a just rate, or the decision as to what constitutes discrimination, is an easy task. To some extent the principles upon which taxation rests must be allowed in fixing a just rate; to some extent the result of the rate upon the development of industries must be taken into the account in all decisions which the Commission is called upon to make; to some extent every question of transportation involves moral and social considerations, so that a just rate can not be determined independently of the theory of social progress." (Annual Report for 1895, p. 59.)

The considerations, it will be noticed, do not seem to include reasonable compensation to the owners of the railroads. "Within certain limits it is good policy for the railway manager to increase his tonnage, even at the expense of reducing the rate per ton. Just how far this rule applies no one can tell. The merchant who buys an article for a definite price knows when he sells it whether he makes or loses by the transaction; and the manufacturer, as a rule, has a pretty accurate idea of the cost of production, but the railroad operator can not ordinarily say whether he should or should not as a matter of policy take traffic at a certain price." (Id., p. 17.)

"The freight rate is a complex problem when applied to almost all competitive traffic. Very few people not acquainted with the subject have any idea how difficult the solution of that problem is." (Annual Report for 1898, p. 15.)

"It is often difficult to say what constitutes a reasonable rate and more difficult to give in detail the reasons that lead to the conclusion reached; although the Supreme Court of the United States has given certain rules by which to test the reasonableness of transportation charges, and although the Commission has endeavored to apply those rules, yet whenever it has interrogated railway officials as to whether or not they are governed by them when making rates of transportation, they have invariably answered in the negative and said that to do so would be impracticable. The carriers do not apparently possess the necessary data for that purpose, and there is at present no other source from which the Commission can obtain such data." (Annual Report for 1903, p. 54.)

"Discriminations between localities or classes of traffic can be redressed only

by the exercise of sufficient authority to readjust rate schedules to be observed in the future on the basis of relative justice." (Annual Report for 1904, p. 9.)

"The great bulk of our orders * * * must pertain to the future. They will be orders fixing either a maximum or a minimum rate." (Annual Report for 1897, p. 35.)

"It is probably near the truth to say that the cases now pending before the Commission directly or indirectly affect almost every locality and therefore nearly all of the people of the United States." (Annual Report for 1904, p. 29.)

In connection with this vast programme of regulation of the affairs of the country generally, it seems proper to mention that during the past year it has been necessary to conduct an official examination of the office of the Commission itself.

Early in the history of the Commission Judge Cooley, its most eminent member, said, regarding a suggestion which would require the Commission to "act as rate makers for all the roads," that "this in any considerable State would be an enormous task. In a country so large as ours and with so vast a mileage of roads it would be superhuman." (1 I. C. R., 280.) This superhuman programme regarding the future powers of the Commission is not consistent with sound views of the functions of our Government. The Constitution would prevent a considerable part of it by the provision (Art. I, sec. 9) that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over another." So, too, President Jefferson in his first message (December 8, 1801) said: "Agriculture, manufactures, commerce, and navigation, the four pillars of our prosperity, are most thriving when left most free to individual enterprise." Again, one hundred years afterwards, President Roosevelt, in his first message (December 3, 1901) said: "It must not be forgotten that our railways are the arteries through which the commercial life blood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies."

In deciding whether it is desirable to give the Commission power such as this it is well to consider the record of the past. In its report of April 16, 1900 (Senate Doc. No. 319), to which reference has been made, the Commission stated the entire number of contested cases decided in the previous ten years as 180, or about 18 per annum. Of these, only 35 went to the courts, or about $3\frac{1}{2}$ per annum. The result was that the Commission was sustained in 4 cases (2 of which were subsequently reversed), reversed in 17 cases, 12 were still pending, and 2 were withdrawn; that is to say, about 1 case in every two and one-half years was sustained by the courts, and slightly more than 80 per cent of the Commission's decisions which had been passed upon were reversed. This the Commission seeks to explain by the fact that it had misconstrued the extent of its powers. (Senate Doc. No. 319.) But there could be no more fundamental or regrettable error than for any tribunal to constantly exceed its jurisdiction. In point of fact, too, the results seem to have been about the same since 1897, when the Supreme Court authoritatively ruled as to the jurisdiction of the Commission as they were before that time.^a

An independent examination of the records which has just been made makes a showing even less favorable. From its creation, in 1887, until October, 1904, the Commission rendered 297 formal decisions involving rates or discriminations, covering 353 cases, as in some instances cases were heard together. This was a period of seventeen years, and the decisions, therefore, averaged about $17\frac{1}{2}$ per annum. Action favorable to the complainants was taken in 194, or 54.96 per cent of the cases decided. So that the complaints coming before it which the Commission held to be well founded averaged $11\frac{1}{2}$ per annum. In the great majority of cases the carriers complied with the Commission's decision. Since 1887 43 suits have, however, been instituted to enforce final orders of the Commission as to rates. This is an average of about $2\frac{1}{2}$ per annum. The net result of the action of the courts has been that in 1 of these cases the Commission was sustained in part by the Supreme Court, and in 1 was sustained by the circuit court, and there was no appeal. These were both cases of discrimination between localities. In 30 cases the Commission was reversed. Two cases were withdrawn; 5 have been long pending, but have not been pressed for hearing, and 4 are still pending. This

^a The facts as to this matter have been worked out with much clearness and detail in several pamphlets published by Mr. Joseph Nimmo, jr., of Washington. They seem never to have been questioned.

shows 2 affirmances and 30 reversals. In other words, about 93 per cent of the decisions of the Commission which were passed upon by the courts were held to have been erroneously decided.

The pending act proposes that the orders of the Commission shall be operative until they are set aside by the courts—they are to have the force of statutes. The Commission describes itself as "the special tribunal created by Congress and exercising its power." (Annual Report for 1895, p. 17.)

"If the Commission establishes a rate that is tantamount to an act of the legislature." (Annual Report for 1897, p. 37.)

As one of the Commissioners expressed the matter at a hearing before the Senate Committee on Interstate Commerce on February 21, 1900 (p. 118):

"The prescribing of a rate is, under the decisions of the Supreme Court, a legislative, not a judicial, function, and for that reason the courts could not, even if Congress so elect, be invested with that authority."

The importance and effect of the Commission's action are stated as follows:

"One of the peculiar features of Federal regulation is that every case before the Commission, however trivial it may appear, involves in its disposition the formulation of principles under the law which have important bearing upon the business of carriers and the commerce not only of the immediate locality, but often of the entire country." (Annual Report for 1893, p. 13.)

But, as just said, over 90 per cent of such decisions have ultimately been overruled. So far as experience is a guide, such a provision as that now proposed would, therefore, probably accomplish injustice in over 90 per cent of the cases affected until the courts granted relief. For this injustice there would be no remedy, because no recovery could be had from the shippers whose goods had been carried upon unjustly low rates. Still further, in case of an appeal to the Supreme Court, the statute expressly provides that there shall be no stay under any circumstances. After long litigation, therefore, the carrier would, in over 90 per cent of the cases, succeed in setting aside the order of the Commission, and would have no remedy whatever for the wrong accomplished by that order.

The substantial and valuable work of the Commission in behalf of the principles laid down by the statute has been in the way of aiding adjustment between the parties. (Annual Report for 1893, p. 14; Annual Report for 1896, p. 55; Annual Report for 1897, pp. 32, 51.) In its annual report for 1901 it says (p. 19):

"The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence or conference with carriers and shippers."

"It may be true that the people who complain of excessive rates are more unreasonable in the making of this complaint than the carriers are in the making of their rates. That possibly is so. But it arises from the lack in these people of a knowledge of the actual situation." (Annual Report for 1897, p. 22.)

The total number of complaints during the year 1903 was 546, but only 84 formal proceedings were instituted before the Commission (Annual Report for 1903, p. 38) and only 16 cases were decided by the Commission, or in the proportion of 1 decision to 46 complaints (id., pp. 46-65, 276, 282). In 1904 there were 487 complaints, but only 62 formal proceedings (Annual Report for 1904, pp. 36-39), and 25 decisions were rendered, several of which were in the nature of rehearings (id., pp. 42-46). Since it was created over 90 per cent of the complaints filed with the Commission seem to have been disposed of informally. The only question at present is how the remainder shall be passed upon. It has been already pointed out that past experience does not warrant or require any enlargement of the Commission's powers in that respect.

Nevertheless the present bill seeks to provide that whenever a rate has been held to be unlawful the Commission may prescribe a rate which shall prevail thereafter. It is sometimes said that the original rate-making power is not sought. (Annual Report for 1895, p. 18; Annual Report for 1897, p. 15.)

"No such power has been asked by or is seriously sought to be conferred upon the Commission." (Annual Report for 1904, p. 8.)

The President's recent annual message said:

"I am of the opinion that at present it would be undesirable if it were not impracticable finally to endow the Commission with general authority to fix railroad rates."

Yet it is obvious that the provisions of the bill would have the effect of giving the Commission complete power over all rates; for, after all, the real rate-mak-

ing power lies with those who pass upon the rates finally, rather than with those who propose them in the first instance. The Commission itself, or any person whomsoever, whether or not he have any interest in the subject-matter and whatever his motive, whether he be a genuine shipper, a public official, a crank, or a blackmailer, may institute a proceeding which may include an unlimited number of carriers and attack innumerable rates. (194 U. S., 25.) Upon the institution of such a proceeding the Commission would be bound to proceed and would have complete power in the premises. This would make all rates subject to its decision.

This point does not admit of argument, because it has already been adjudicated. In its annual report for 1904 the Commission says (p. 8):

"The amendments now recommended by the Commission as to authority to prescribe the reasonable rate upon complaint and after hearing would confer in substance the same power that was actually exercised by the Commission from the date of its organization up to May, 1897, when the Supreme Court held that such power was not expressed in the statute."

The precise effect of this power was clearly stated by the Supreme Court as follows:

"There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads of the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching to every road and covering every rate."

Illustrations of the truth of this are that the Import Rate case, decided in 1894 (2 I. C. R., 658; 3 Id., 417), involved the rates upon all shipments from abroad to any interior points throughout the country; and the Supreme Court said that the orders therein—

"Instead of being regulations calculated to promote commerce and enforce the express provisions of the act, are themselves laws of wide import, destroying some branches of commerce that have long existed, and undertaking to change laws and customs of transportation in the promotion of what is supposed to be public policy." (162 U. S., 234.)

The Maximum Rate case (4 I. C. R., 592, 617), decided in 1894, involved in one proceeding practically all rates on south-bound business east of the Mississippi River, and the Business Men's League case (9 I. C. R., 318), decided in 1902, involved substantially all rates from the Mississippi to the Pacific Ocean. As the Commission said, in language which has been already quoted from the annual report for 1893 (p. 13):

"Every case before the Commission, however trivial it may appear, involves in its disposition the formulation of principles under the law which have important bearing upon the business and the commerce not only of the immediate locality, but often of the entire country."

The extent of this power may be judged from the fact that the report of the Commission for 1904 (p. 64) states that there were then 2,358,960 tariffs on file, the annual average being over 130,000, and more than one-third of the Commission's clerical force—which third would apparently be about thirty clerks (Annual Report for 1903, pp. 128-131)—was constantly occupied in the work of filing, indexing, and furnishing information in reference to them (Id., p. 65), and from the facts that the gross earnings of the railroads last year were \$1,966,633,821 (Annual Report for 1904, p. 105) and the capitalization \$12,599,990,258 (Annual Report for 1904, p. 109), which is dependent for its value wholly upon earning power, and that the internal commerce of the country during the last year has been recently estimated at \$22,000,000,000 in value.

As the Commission said in its annual report for 1897:

"The amounts involved in the reductions asked for are enormous (p. 22); * * * the amount of money involved would be much greater than that involved in the decisions of any trial court in the United States. The results would naturally be of more consequence to the litigants than those of any such court" (p. 26).

It might well have said than all the courts together. It should, therefore,

is plainly understood that the proposed act places all rates under the full and discretionary control of the Commission.

In the execution of this power it will shortly be seen that the Supreme Court has stated certain rules as following from the guaranty of property contained in the Constitution. It has already been seen that the Commission has stated its inability to apply the same (Annual Report for 1903, p. 54), and has admitted practically that it has no definite principles of rate making, but is controlled among other things by "moral and social considerations" in determining these vast rights of property. (Annual Report for 1895, p. 59.) This condition of things is not surprising. Every varied and complicated business must be treated as a whole. It is impossible to dissect it and treat its numerous parts separately in accordance with abstract rules. If the future of the business is to be subject to the control of those who have no interest therein, it would be better that such action should affect the business as a whole than that its income should be cut down by piecemeal without responsibility for the final result. Nothing, therefore, could be more dangerous to the value of railroad property than the system now proposed of committing its future to the control of persons without interest therein, or responsibility for the results of its operation.

Furthermore, the act contemplates conferring upon the Commission entirely new powers. It is now empowered merely to prevent preferences upon lines formed by a single railroad or by agreement of two or more for joint rates (secs. 1, 3).

"There is one class of discriminations which we have never possessed the power to effectually correct, even while we assumed the right to fix the maximum rate. We refer to that class of cases where the differential in question is to be maintained by independent lines as well as by a common line." (Annual Report for 1897, p. 24.)

"The Commission is not empowered to fix a minimum rate when that remedy is found necessary to correct wrongful discriminations between localities." (Annual Report for 1898, p. 23.)

"This Commission has no authority to require carriers to make a through route or establish joint rates." (Annual Report for 1893, p. 16.)

And there is now no power over divisions of joint rates. (Annual Report for 1901, p. 28.)

But the proposed act provides that the Commission shall have power to settle both divisions of joint rates and the "just relation of rates" by different lines at common points.

It needs no argument to show that this would concentrate in a single board power to determine the commercial and industrial future of all the various localities throughout the country.

"Every community and every pursuit is so dependent upon the agencies of transportation, so directly affected by the cost of this necessary service, that an inequitable adjustment of rates between competing towns or commodities may produce serious and widespread disaster." (Annual Report for 1893, p. 6.)

Its conception of the use of such a power was shown in the Differential Case (7 L. C. R., 669, 670). After pointing out the degree of New York's commercial importance the Commission said:

"A question is how far is this port of New York 'entitled,' or how far can that port expect to continue to enjoy that commercial supremacy? Plainly not to the same extent. It would be in accordance neither with the theory of our institutions nor with the history of the development of our nation to permit any one port upon our vast extent of seacoast to monopolize the trade with foreign nations. Within recent years the United States Government has expended large sums in improvements of other ports. These vast sums have not been appropriated and expended certainly upon the theory that it was desirable for the foreign trade of the country to flow through the port of New York alone. Rather does this recognize it as the policy of our Government that its foreign commerce should be distributed between various ports."

The Commission accordingly sustained these differentials against New York, notwithstanding the constitutional provision that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." (Art. I, sec. 9, subd. 5.) Yet singularly enough the Commission has just held that "it is no part of its duty to equalize differences in the natural advantages of localities through the adjustment of tariff rates." (Annual Report for 1904, p. 45.)

These varying principles may equally be applied to any locality in the country as may suit the fancy of the Commission. Paraphrasing the Commission's language this statute would "put into its hands the power to determine what localities shall pay and what receive tribute." (Annual Report for 1897, p. 45.) As over 90 per cent of the Commission's orders as to rates which have gone before the courts have been overruled, it is impossible to foretell what havoc would follow from the exercise of such powers.

This would be merely a further step toward general governmental regulation of commerce. Congress is not given by the Constitution any special power over the carriers. The provision is that it shall have "power to regulate commerce with foreign nations and among the several States." (Const., Art. I, sec. 8, subd. 3.) But the shipper of goods is engaged in interstate commerce equally with the carrier of the goods shipped. (175 U. S., 211; 193 U. S., 38.) The shipper and his business are, therefore, quite as much within the power of Congress as the carrier and its business. Accordingly, the antitrust act passed July 2, 1890, provides that all goods that are the subject of combinations in restraint of trade may be forfeited in transit.

In the Fifty-seventh Congress an act (H. R. 117) was introduced with the approval of then Attorney-General Knox, and passed by the House, prohibiting transportation of goods manufactured by combinations which could not be reached directly by the Federal statute. The Supreme Court has held in the lottery case (188 U. S., 321) that it is competent for Congress to prohibit transportation of lottery tickets as merchandise, and two former Assistant Attorneys-General of the United States have since published articles in the reviews vigorously asserting that this establishes the power of Congress to exclude from interstate commerce whatever it sees fit. The last Democratic platform declared that "any trust or unlawful combination engaged in interstate commerce which is monopolizing any branch of business or production, should not be permitted to transact business outside of the State of its origin; whenever it shall be established in any court of competent jurisdiction that such monopolization exists, such prohibition should be enforced through comprehensive laws to be enacted on the subject," and the Commissioner of Corporations is suggesting that a Federal license shall be required as a condition of engaging in interstate commerce—in other words, that engaging in interstate commerce as a means of livelihood shall no longer be a right, but a privilege to be enjoyed only by those possessing a license upon such terms as the Government shall see fit to prescribe. This makes it clear that the method of governmental regulation proposed would apply to all the operations of interstate commerce and would be equally dangerous to all engaged therein. The pending bill, if successful, would be merely one step in the direction of general socialism, which would affect manufacturers, shippers, and carriers alike, and would subject to governmental control the question what the citizens of the country shall be allowed to earn by the use of their constitutional rights of liberty and property.

Finally, the bill would establish rigid methods of transacting business which would tend to arrest commercial progress. The most effective cause of reduction of rates is the effort of traffic officials to enable their respective shippers to extend their business and constantly reach further markets and consumers.

"The location of new business enterprises is frequently settled since the passage of the act to regulate commerce, as well as before, not so much by the wishes of those who control them and the advantages for economical production or trade afforded at particular places as by the favorable transportation rates which railway managers can be induced to put in force." (Annual Report for 1894, p. 57.)

This process of development can be continued only through gradual reductions of rates, and in its continuance shipper, carrier, and consumer are alike interested. But this process of development will be arrested if the rates are finally subjected to the veto of a body having no substantial interest in the success of the transportation business or of the industries upon the line. Moreover, after a rate is once established under the proposed statute it will continue in effect until changed by the Commission, "upon full hearing of all parties in interest." As to who would be a "party in interest" the act contains no indication. As anyone can institute a proceeding (194 U. S., 25), it would apparently be the public at large. Such change of a rate once established could not be accomplished by act of the courts, but only of the Commission.

Every rate once fixed would thus be incapable of change without a proceeding before the Commission as dilatory as a lawsuit, and as the Commission proceeded the scope of this rigid condition of rates would constantly extend.

Every practical man must realize that business is carried on successfully by negotiation and agreement of the parties rather than by the judgment of any tribunal. There is no successful branch of business in which the general future relations of those engaged therein are regulated by third parties, whether an administrative commission or a court of justice.

If, indeed, a condition of absolute equality among different localities could be established at a particular moment of time, it would be temporary only. Industry in this country is intensely progressive, and the perfect equality of one day would probably be the grossest inequality of another. The absence of elasticity in a system of Government rate making is one of its most serious faults; thus the rate-making State commissions have had to fall back on distance tariffs on account of their inability to make those delicate adjustments which are constantly made by railway traffic officers. Such rigidity is a bar to industrial progress, and probably accounts, in a large measure, for the fact that in the States which have rate-making commissions the rates are higher under similar circumstances and conditions than in other States which have left the contract of transportation to unrestricted negotiation between the parties.

These considerations establish that such a system would be full of danger, the extent of which can scarcely be judged.

(3) SUCH A DRASTIC SYSTEM WOULD FAIL PRACTICALLY BY REASON OF THE PROVISIONS OF THE CONSTITUTION.

It may well be doubted, however, whether the proposed Quarles-Cooper bill would prove any more enforceable than is the case generally with unnaturally drastic statutes. It has been already pointed out that the Commission has no judicial quality, so that its decisions would always have to be enforced by the judicial tribunals. The procedure would therefore be as slow and complicated as at present.

The proposed act would probably not be held to confer affirmative power to establish rates for the future. Its provision in that regard does not purport in express terms to confer any new power upon the Commission. It is that any order "declaring any existing rate or rates * * * or any regulation or practice affecting such rates or facilities afforded in connection therewith to be unjustly discriminative or unreasonable, and declaring what rate or rates, regulation, or practice affecting such rate or rates would be just and reasonable, and requiring them to be substituted therefor, shall become operative and be observed by the parties against whom the same shall be made within thirty days after notice, * * * but such order may at any time be modified, suspended, or revoked by the Commission upon full hearing of all parties in interest."

It will be observed that this section does not state that orders so made by the Commission shall be operative "for the future." The bills as originally drawn contained these words, but their authors had them stricken out, apparently fearing that they would make the act subject to doubts as to its constitutionality. This, of course, leaves it a question of construction whether the substituted order would have future effect or would not be merely, as at present, an order with reference to past conditions. The only affirmative provision of the act fixes the date when the order shall become operative: It does not purport to grant authority to make a new species of order. It has been held by the Supreme Court (167 U. S., 479) that the Commission has no power to make an order as to the future, but, of course, has power to make orders as to the past. Can it be seriously claimed that a provision fixing the time when the Commission's orders shall become operative confers upon it the entirely new legislative power of making orders as to the future which it does not now possess?

The claim that power over future rates was conferred upon the Commission by implication and deduction was exactly what led to its grave error in attempting to fix future rates, and such methods of construction were strongly disapproved by the Supreme Court.

"The grant of such a power to fix rates is never to be implied. The power itself is so vast and comprehensive, so largely affecting the rights of carrier and shipper, as well as indirectly all commercial transactions, the language by which the power is given had been so often used and was so familiar to the legislative mind and is capable of such definite and exact statement that no just rule of construction would tolerate a grant of such power by mere implication." (167 U. S., 494.)

The power to prescribe a tariff of rates for carriage by a common carrier "is a legislative and not an administrative or judicial function, and having respect to the large amount of property invested in railroads, the various companies

engaged therein, the thousands of miles of road, and the millions of tons of freight carried, the varying and diverse conditions attaching to such carriage is a power of supreme delicacy and importance. That Congress has transferred such a power to any administrative body is not to be presumed or implied from any doubtful or uncertain language." (Id., 505.)

To restate the matter, the Commission now has authority to make orders as to the past, but has no such authority as to future rates; the proposed statute provides that if the Commission makes an order adjudging against a prevailing rate or practice and providing what shall take its place, the same shall become operative within thirty days; the statute does not provide in terms that this shall control future conditions, and the Supreme Court has held that no power in the Commission over future conditions can be established by implication. It is perfectly clear, therefore, that a statute providing merely when an order of the Commission shall become operative would be held to apply solely to an order which the Commission had substantive power to make; no additional substantive power could be held to arise from uncertain implication from provisions as to when an order should become operative. That method of establishing power in the Commission was precisely what was so vigorously disapproved by the Supreme Court. It is not too much to say, therefore, that this statute would probably not confer upon the Commission any additional power as to future rates.

But even if the statute conferred power of making future rates upon the Commission, various difficult constitutional questions would arise. The power to regulate commerce has, indeed, been said to be "plenary"—a word of no exact juridical meaning. But, "like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the fifth amendment." (148 U. S., 312, 336.) "It is scarcely necessary to say that the power given to Congress to regulate interstate commerce does not carry with it any power to destroy or impair those guaranties." (154 U. S., 447, 479; 9 Wheaton, 1, 196; 2 Peters, 627, 657.) The provision of the fifth amendment is that "no person shall be deprived of * * * liberty or property without due process of law, nor shall private property be taken for public use without just compensation." It is well settled that the carrier is entitled under such constitutional guaranties to receive compensation which is reasonable (169 U. S., 466), and that rule is adopted by the proposed act.

The character of the questions which would be open in every such litigation is stated by the Supreme Court through Justice Harlan as follows (169 U. S., 546):

"It can not be assumed that any railroad corporation, accepting franchises, rights, and privileges at the hands of the public, ever supposed that it acquired, or that it was intended to grant to it, the power to construct and maintain a public highway simply for its benefit, without regard to the rights of the public. But it is equally true that the corporation performing such public services and the people financially interested in its business and affairs have rights that may not be invaded by legislative enactment in disregard of the fundamental guaranties for the protection of property. The corporation may not be required to use its property for the benefit of the public without receiving just compensation for the services rendered by it. How such compensation may be ascertained, and what are the necessary elements in such an inquiry will always be an embarrassing question. * * * We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth." (Id., 546, 547.)

Whenever, therefore, a rate should be established by the Commission, it would necessarily be subject to review on the issues thus stated, and the findings of

the Commission would probably not have even *prima facie* force, because the question of reasonableness would be jurisdictional and could be determined only by judicial decision. (134 U. S., 618; 169 U. S., 466.) The Commission has stated that it is unable to apply these constitutional rules (Annual Report for 1903, p. 54), but that "to some extent every question of transportation involves moral and social considerations, so that a just rate can not be determined independently of the theory of social progress." (Annual Report for 1895, p. 59.) These considerations and theories have never been defined by the Commission, and they are not embraced within the matters enumerated by the Supreme Court as bearing upon the question whether rates are reasonable within the purview of the Constitution. No argument is needed to show how difficult and overwhelming would be the litigation arising from such a situation.

Still further, as already said, the Constitution provides (Art. I, sec. 9, subd. 5) that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." But ports now exist, by statute and usage, not only at the seashore but throughout the country. On that issue also practically every decision of the Commission establishing a future rate would be subject to review, for anything of the sort varying natural conditions would be a "regulation of commerce" giving "a preference to the ports of one State over another." It is clear that very few would stand the test of this provision.

Incidentally it may be observed that the court is to hear the case on the record before the Commission and that the introduction of further testimony rests in the discretion of the court. It certainly is a startling novelty to provide that the evidence upon which judicial action is to be based shall be taken by a quasi prosecuting body which has no judicial character and is not bound by the rules of evidence (194 U. S., 25), and that it shall be discretionary with the court whether to receive evidence upon the main issue which it is to try, and which will raise a jurisdictional and constitutional question. It can not be that such a proceeding would be due process of law, for at no stage would the evidence have been taken by a judicial body.

The proposed act provides, further, that after an order has been made by the Commission it may be enforced by injunction and by action of debt for the penalties which it establishes. It is clear, however, that upon an application for an injunction the question of reasonableness of the rates would be open to litigation for the reasons stated above. Indeed, the Supreme Court has held exactly that upon any application to the courts for enforcement of an order of the Commission the merits of such order are fully open to litigation. Failure to obey the Commission's order can not give rise to any penalty. (154 U. S., 479, 485, 489.) "No question of contempt could arise until the issue of law in the circuit court is determined adversely to the defendants and they refuse to obey, not the order of the Commission, but the final order of the court." (Id., 489; see also 37 Fed. Rep., 614, 615.) This provision, requiring the courts to enforce by injunction the orders of the Commission, is therefore wholly illusory and would prove nugatory. Those orders would have no greater force than at present. There could be no proceedings for contempt until the defendant had refused to obey "not the order of the Commission, but the final order of the court."

The situation would be similar in any action of debt. In the latter case the further question would arise whether the statute does not contravene the seventh amendment to the Constitution, providing that "the right of trial by jury shall be preserved." The proposed statute seeks to make the finding of the Commission as to the reasonableness of the rate conclusive upon the jury—that is to say, the jury is sought to be deprived of the opportunity to pass on the credibility of the evidence and of the power to decide the crucial facts. This obviously would not be preserving but rather destroying the right to trial by jury.

These brief suggestions, which could be greatly amplified if necessary, make it clear that under the Quarles-Cooper bill there would be quite as much litigation as at present, and it would be quite as difficult to reach results.

(4) SUCH A SYSTEM WOULD NOT ACCOMPLISH THE DESIRED RESULT.

It seems unlikely that more drastic legislation would result in anything save annoyance and disappointment.

The interstate commerce act itself is a fair illustration of this. Its substantive provisions are that rates shall be reasonable, and there shall be no unjust discrimination or undue or unreasonable preference; everyone has always agreed to their justice. The procedure for their enforcement is now absolutely com-

plete. Anyone can file a complaint; the findings of the Commission are *prima facie* evidence of the facts found; the courts act on as short notice as they deem proper, and proceed speedily as a court of equity, but without formal pleadings or proceedings; the constitutional protection from self-crimination has been removed by statute, so that anyone can be compelled to testify; cases arising under the statute have preference over everything; individuals and corporations violating the act, whether carriers or shippers, are subject to heavy fines; the provisions of the act may also be civilly enforced by decree in equity with subsequent contempt proceedings, involving fine and imprisonment, in case of disobedience, and appeals lie directly to the Supreme Court in all cases (194 U. S., 25). In reference to no other subject-matter does such drastic procedure exist under Anglo-Saxon jurisprudence—it has no further resources. Yet at the end of seventeen years the Commission says that all this has accomplished little or nothing, and that it must, as far as possible, be made independent of the courts, apparently because they have overruled more than 90 per cent of its decisions which have been litigated. But this is a great mistake. The approximately 90 per cent of complaints settled between the parties show where the act has been effective; its provisions which represent ordinary business methods have been eminently successful. As to the remaining cases, however, experience has, in great measure, demonstrated the failure of unnaturally drastic methods.

The antitrust act has had a similar result. After giving to its first section the startling construction that it prohibited all contracts in restraint of trade, although they might be perfectly reasonable, the Supreme Court has been slowly but inevitably receding from that construction. No one has ever tried to enforce the other provisions of the act—their weakness has been too manifest. The historian Lecky well says that most of the great reforms of English history were accomplished by repealing statutes, not by enacting them.

The lesson of all this is that the constant enactment of new statutes is a very crude expedient for meeting the difficult situations in life. Any real remedy must always come from the slow but inevitable working of natural laws and from improved conditions in business and society. In the present case these natural methods have already largely done away with unreasonable rates and with preferences between individuals. As regards the remaining matter of alleged preferences between localities and kinds of traffic, the record shows that few such claims are well founded. Indeed, but two such cases have been established in the courts during seventeen years. In the face of this it is idle to claim that any good would result from still more drastic methods.

THE REMEDY CONSISTS IN PROMOTION OF BETTER RELATIONS BETWEEN THE PARTIES AND ENFORCEMENT OF THE EXISTING LAW IN THE COURTS.

This is the proper function of the Interstate Commerce Commission. As already said, it has done admirable work in promoting better relations by aiding in the settlement without controversy of more than 90 per cent of the complaints which have come before it. Quite possibly this better understanding might be aided, too, by the voluntary organization of joint committees of shippers and traffic officials, who would consider informally matters of joint interest and make recommendations which both sides would almost certainly adopt. The parties would thus come together originally, and the Commission be relieved of much detail. This has been already suggested by the Commission, which said in its annual report for 1908 (p. 22) that such a course "might do much to promote just conduct and harmonious relations between the railroads and the public, and thus prove mutually beneficial to a high degree." In some parts of the country, as Ohio and Kansas, a successful beginning has been made in this direction.^a

^a Rather curiously the efficacy of this method is fully recognized in "the transportation tax," to which reference has been made above (p. 48). The cattle growers' committee reports that it has conferred with the railroad officials and "has been met by the railroads in a very friendly and courteous manner. The committee has succeeded in accomplishing very much in the way of immediate and temporary relief. Service has been greatly improved, and in some instances rates have been adjusted upon a more satisfactory basis, while the railroad officials with whom the committee has met have shown a disposition to treat the cattlemen with the greatest fairness. The committee has realized, however, that relief granted must be of a temporary nature. * * * Through its officers and subcommittees it hopes to continue the present cordial relations with the railroad officials to the end that business may be conducted with as little friction as possible."

As to the litigated cases, however, the remedy must be in the courts as it is when property rights generally are alleged to have been infringed. The statutes now provide that the hearing of such cases shall have preference in the courts over everything. The present expense and delay are due to the preliminary hearings before the Commission. Those hearings are entirely anomalous in their character and should cease, save so far as may be necessary to advise the Commission sufficiently to determine whether to institute judicial proceedings. The Commission would thus be relieved of attempting to reconcile the wholly inconsistent functions of prosecutor and judge. At present it defines itself as "not a court; it is a special tribunal engaged in an administrative and semijudicial capacity investigating railway rates and practices." (Annual Report for 1890, p. 71; Annual Report for 1903, p. 33.)

"Congress has not seen fit to grant legislative power to the Commission." (162 U. S., 216.) "The power given is the power to execute and enforce, not to legislate." (167 U. S., 501.)

To this it is now proposed to add the legislative function (167 U. S., 505, 506) of making rates for the future.

Such a combination is not recognized by American constitutional principles. It has always been a fundamental rule that the executive, legislative, and judicial functions can not be exercised by the same persons. (Federalist, 47, 63, 71.)

"The legislature makes, the executive executes, and the judiciary construes the law." (10 Wheaton, 46.)

"It is believed to be one of the chief merits of the American system of written constitutional law that all the powers entrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined." (103 U. S., 190.)

If the bill should become a law the Commission would be in the unique position of exercising all three of these powers.

As the courts have to pass ultimately upon contested cases, the preliminary hearing before the Commission is merely dilatory in its effect. As the Commission said in its annual report for 1897:

"* * * What is the effect of the order thus made? Really nothing whatever (p. 31); the trial before the Commission, with all its attendant expense and consumption of time, goes practically for nothing (p. 31); our order when made binds nobody (p. 32). Nobody is compelled to obey it. Nobody suffers any penalty for refusing to obey it" (p. 33).

It is useless to compare conditions under the English act. (Annual Report for 1893, p. 16.) There Parliament is supreme because there is no written constitution. But here, by reason of the provisions of the Constitution, no form of statute can be devised which will give the Commission's orders any validity as adjudications. (154 U. S., 485.)

The justices of the circuit courts are constantly passing upon such questions, and in many cases would have the advantage of a knowledge of local conditions which the Commission can not possess. So, too, they are judicial officers appointed for life and habitually occupied with the disposition of varying questions of law and fact, while the Commission is an administrative body, the members of which hold office for a term of years only, are frequently changed, and generally have little experience before their appointment. However, it is perhaps invidious and certainly unavailing to make comparison between the two bodies. As already said, no decision of the Commission can be enforced unless it is confirmed by the courts. "Without the aid of judicial process of some kind, the regulations that Congress may establish in respect to interstate commerce can not be adequately or efficiently enforced." (154 U. S., 485.)

It may be doubted whether anything substantial would be gained by establishing a special court for this purpose. The existing judicial machinery is ample to deal with the subject, and the statutes secure an immediate hearing. In the last seventeen years there have been but thirty-two cases under the act which have been brought to a final hearing. A special court with less than two cases a year seems unnecessary. Its experience would probably be similar to that in England where a special tribunal was established after much agitation and was astonished to find that it had little to do.

So, too, probably little would be gained by authorizing pooling, even if that were possible. Such contracts could not be made compulsory, and it would be as difficult to negotiate a pooling contract as to secure voluntary maintenance

of rates, and for much the same reasons. Such contracts, too, greatly encourage the construction of unnecessary roads for the purpose of forcing entrance to the pool, with the effect that the public is burdened with excessive capitalization.

But what possible advantage can there be in the Commission's preliminary hearings? As already said, time and expense would be saved by going immediately to the circuit court—the tribunal which must decide at last. The Commission will find ample and most useful employment in the administrative duties imposed upon it by statute (154 U. S., 447), the volume of which will constantly increase. "The burdens imposed upon (the Commission) under the law are quite sufficient to satisfy the most grasping ambition." (Annual Report 1893, p. 225.) It will have the time and opportunity to investigate such complaints as it can not settle and to seek the aid of the courts when it deems that course desirable. But the tedious delay will be avoided which is incident to a formal trial before the Commission, involving prolonged arguments both oral and written, and a subsequent opinion and order of the Commission. All of this it truly says "goes practically for nothing" (Annual Report for 1897, p. 21), and in more than 90 per cent of the cases which have been litigated the order thus made has been overruled.

Under section 12 of the interstate commerce act, "the Commission is authorized and required to execute and enforce the provisions of this act," and it is the duty of any United States attorney to institute proper proceedings on its request. It was, accordingly, held at circuit that the Commission might, without formal order upon its part, apply directly to the courts to enforce the statute (65 Fed. Rep., 903), and the Commission expressed approval of this method as useful in very many cases. (Annual Report for 1894, p. 7; Annual Report for 1895, p. 80; Annual Report for 1896, pp. 15, 89.) Whatever doubt may have existed as to this power has been removed by the Elkins law, so far as concerns any alleged discrimination. (189 U. S., 274.) Under this the Commission makes such investigation as it sees fit, and resorts directly to the courts when it deems the law to be violated. As the Commission states in its annual reports for 1903 and 1904, that method has proved effective. Its scope can easily be enlarged, if necessary. This would simplify the present procedure and that indicated in the Quarles-Cooper bill; it would terminate the vain attempt to blend administrative and judicial duties. It would leave the Commission free to investigate to whatever extent it deemed necessary, and to enforce the law promptly through the courts, which alone can act effectively, and to which, under the Constitution, the Commission must always resort at last.

This is the orderly manner in which all other governmental functions are administered. Under the American constitutional system the prosecutor can never be a judge in the cause. No reason has been suggested, and certainly experience has indicated none, why this great subject of Federal power should be alone subjected to dilatory preliminary proceedings, in which the prosecutor goes through the motions of possessing judicial character which it does not in fact possess (154 U. S., 479, 485, 489), and makes decisions which, as it says itself, "bind nobody and go for nothing." No useful purpose can be served by such empty procedure. The great cause for complaint is lack of dispatch in these matters. The most effective remedy would be to simplify the procedure by doing away with these useless preliminaries and going at once to the courts upon the merits of the questions involved. The present statutes provide for all possible dispatch in the courts consistent with the constitutional guaranties of liberty and property.

So far as the present law has failed, it has been because the executive branch of the Government has not vigorously enforced it. The remedies are ample as regards existing conditions, yet the executive branch has not made effective use of the power which it possesses, but has constantly demanded more power. Before anything is done in that direction the existing power should be vigorously used. This is especially the case, because, under the present system, the country generally is at peace. There is little force in the suggestion that in many States commissions have power over future rates. Where that is so the claim of preferences between localities and kinds of traffic is as acute as it ever was. On the other hand, the most intelligent State in the country is Massachusetts, the most populous and richest is New York, one of the greatest in every way is Ohio, yet their commissions have no power over rates. The second State in population and the greatest in industrial activity is Pennsylvania, one of the most prosperous is Indiana, but they have no commissions whatever; yet in these States, generally speaking, there is peace, and they contain about one-

third of the population of the country. Indeed, more than one-half of the population of the country lives in States where there are no rate-making commissions. On the other hand, nearly or quite the first State to endow a railroad commission with full power over rates was Illinois; yet its shippers constantly inveigh against the action of the commission, both as to reasonableness of local rates and preferences between localities. Indeed, whatever difficulties exist as to both local and interstate traffic center mostly about Chicago and points dependent thereon. But there is no good reason why the whole country should be subjected to such a dangerous and socialistic change because of such local conditions. If the law be vigorously enforced, they will cease to exist there as they have throughout the country generally. Failure to use existing power, whether locally or generally, does not warrant granting additional power.

The true remedy, therefore, is to ameliorate, rather than exasperate, the relations of the parties, and, discontinuing idle preliminaries, to apply at once to the courts for relief whenever the law is violated. This is the method of enforcing both private and public rights which has been adopted by Anglo-Saxon methods of government. No good reason can be given for departing from it. This course would have the immense advantage of securing immediate relief wherever it is needed, while any novel system would be experimental at the best, and must equally depend for success upon the manner in which it is administered. The suggestion of additional power has little merit in the face of omission to assert powers already possessed.

Dated January, 1906.

Respectfully submitted.

SAMUEL SPENCER.
DAVID WILLCOX.

MONDAY, January 23, 1906.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. A. C. BIRD.

Mr. Chairman and gentlemen, I want to preface what I may say with a short statement.

Mr. TOWNSEND. For whom do you appear?

Mr. BIRD. No one railroad in particular, rather myself, or as one having some experience who wishes to submit practical questions to the committee.

Mr. MANN. Just tell us who you are.

Mr. BIRD. I am the vice-president of each of the railroads known as the Gould system—the Wabash, Missouri Pacific, Iron Mountain, Denver and Rio Grande, International, and Northern Texas and Pacific.

It is far from my purpose to attempt to obstruct or delay legislation or to oppose any wise measure for the proper and just regulation of great interests. I have no ready-made remedy or substitute for any of the bills which have been presented to you for consideration. My only purpose is to try to show to you some of the practical features of the subject. In fact, I think I should say, and may say fairly, that I am disposed to be strongly in favor of wholesome regulation, such regulation as is necessary to the prosperity of the country, just such prosperity as is necessary to the success of the railroads.

I candidly believe that the popular demand, if there be such a thing, for new legislation is based upon a misconception of the facts. So far as I see, so far as I know by actual contact with the people,

with the commercial cities, distributing centers, shipping communities, the great hue and cry, well justified perhaps, is for measures which will utterly extinguish the practice of secret preferential rates, and it has been so in my belief from the beginning, going back into the year 1902, when I had the honor to appear before this committee. And it seems to me that the tendency, the sum and substance, and the spirit of the bills which have been suggested in nowise touch upon the subject which underlies and gives rise to all the public opinion there is on this subject. None of the measures which have been presented, so far as I have been able to learn, in any degree whatever touches upon the main question. I think this was so two or three years ago.

You will find by the records of the Interstate Commerce Commission and by utterances of many public men who have been well informed that unreasonable rates per se have practically disappeared. That has been announced on many occasions, and the announcement is sustained by the records of the Interstate Commerce Commission. The interstate-commerce act has been in effect about eighteen years. I do not call to mind a single case where the courts have sustained any action of the Commission with reference to the reasonableness of rates per se. I think there is no such case on record. Some say that 99 per cent of the cases taken before the Commission are cases which involve the relative reasonableness of rates. In railroad parlance we say "the differential" is involved.

Mr. TOWNSEND. May I ask you this, Mr. Bird: As I understand you, you say that there is no case on record where the Interstate Commerce Commission has been sustained on its ruling as to the unreasonableness of a rate per se.

Mr. BIRD. That is my understanding.

Mr. TOWNSEND. Has that question ever been squarely before the courts, and have they ever reversed the Commission on that point?

Mr. BIRD. I do not know. But it is of record that the courts have not passed upon that question and that there are no claims—practically none—that bear specially upon that point. It is a fact that a very large percentage, a very large proportion, of all the claims or complaints that have gone before the Commission involve solely the question of differentials; some say as high as 99 per cent. I have stated it frequently at 75 per cent, and I think 75 per cent is a very conservative estimate, perhaps too low.

Whatever demand there may be for power of the Commission to make rates has its source, its rise, its growth, its whole existence in the innumerable controversies between locations, between rival markets. The Commissioners themselves, who seek more power, state that unreasonable rates per se have practically disappeared. And it is a logical conclusion that the power is wanted solely to enable the Commission or some power to adjudicate between rival communities, rival markets. And I believe that it is safe for this committee and all who deal with the question of legislation to start out with the proposition that the only purpose, the only reason, the only justification for clothing anybody with this power is that they may settle these questions of differentials.

The interstate commerce act, with its amendments, and with, in addition, the Sherman antitrust act are the laws which are brought to bear now, and the only ones that as I can see bring to bear any

power over the subject of transportation; and running through every feature, every section, every clause of those laws is made most manifest this demand on the part of the people crystallized into an act of Congress, that there shall be nothing which shall impede the force of legitimate competition; it is the underlying principle; it is the very corner stone of everything which has been done in respect to the regulation of railroads. The competition between, say, two lines running between two given points is but a drop in the bucket compared to the competition between rival markets. It may be possible for rival carriers to in some sort harmonize their differences as between two given points, for they serve identical interests; but no power has yet been devised to satisfy, allay, control, or regulate the competition of rival markets. Every large city, every manufacturing city, every town where there is a jobber, is organizing, and all such places have been organizing for years and establishing boards of trade, merchants' associations, and manufacturers' associations, and the like, and the sole purpose is to maintain the supremacy of the town which they represent.

There is a constant struggle, a never-ending struggle, and it is that which has given life to the competition of the day, perhaps the most wholesome competition, the best of its kind, that which has the best results to the people at large; and it is this competition that you are asked to regulate and control. In its wisdom Congress had enacted laws which have been construed by the highest courts as practically prohibiting the representatives of competing railways or any railways from sitting down together and discussing the merits and the demerits of certain rates and agreeing upon rates which shall be charged. It is a serious question whether any two men may safely undertake that work; and in saying this I want to be conservative, and I want to speak within reasonable limits. I believe that is true. We have been warned, cautioned, time and again against it, and in many investigations which I have attended great pains have been taken to make it manifest that the railroads had agreed upon rates, so that it is very plain, and must be plain to everyone, that the purpose of every law which has been passed upon the subject is to secure to the people all of the results of ungoverned, unrestrained competition.

Nothing has been suggested recently in the way of proposed legislation but that which overturns completely every fundamental principle that has been established or sought to be established by law up to this day. So that it seems to me the trend of affairs here is of a revolutionary character rather than evolutionary. We have been working for eighteen years, more or less, under the interstate act, always governed by the underlying principle of "no obstruction to the force of competition." I want to make it plain to you, if I can, that all that has been proposed so far is the direct opposite of all that has preceded. It may be demonstrated, possibly it can be, that the railroad companies have failed to make a proper distinction between the rights of various communities. In other words, they may not have succeeded in establishing a reasonable differential base as between various competitive localities. Certainly they have made mistakes; but I think it no wonder when the law prohibits them from the very measures which are necessary to more correct and better advised action.

Mr. TOWNSEND. That is the interstate law?

Mr. BIRD. The interstate law. Running through the interstate law is the declaration, again and again, in various forms, against the suppression of competition; but running through the Sherman Act, that is clearly prohibitive of any combination whatever.

Mr. SHACKLEFORD. You mean the opposition to pooling?

Mr. BIRD. The opposition to pooling is only one manifestation of that. It is a serious question, I think, Mr. Chairman and gentlemen, first, because it appears and is evident, I think, that in dealing with the railroad question the public and you gentlemen of Congress make the mistake sometimes of regarding the railways of the country in the aggregate, as an entity, something that acts and moves under the control of a single mind and pursues a single policy. The question before us, I think, is one largely whether the measures proposed are the measures which you want, or if the effect of the proposed measures is what the people of this country want. Every guard has been made against combinations of railroads; prohibitions have been made against combinations or agreements, so that there may be free scope to market competition.

Mr. TOWNSEND. Is there free scope? Are there no combinations?

Mr. BIRD. Perhaps. But the point I wish to make is this: That the proposition submitted, so far as I have seen, absolutely ends competition. Now, as a railway official, it is not worth while for me to waste any time on the proposition that competition may be eliminated. As a practical matter of everyday work, the measures which have been proposed will remove from the traffic manager one-half or more of his greatest burdens.

The CHAIRMAN. Let me ask you a question there, Mr. Bird. You say—not in words, but I suppose mean to say—that giving to the Commission, under circumstances, a power to fix a rate, is the overturning of all of the policy to leave competition to do its work with reference to all of the contests of markets?

Mr. BIRD. That is so, sir.

The CHAIRMAN. Is that true? Have you seen any proposition that gives to the Commission the power to fix a rate until after an investigation and after they have determined the rate proposed to be changed to be unreasonable? Now, in determining that question of unreasonableness, will not all of these questions of the competition of markets come in for their full share of review and consideration?

Mr. BIRD. I think not. I think it is impossible that they should come in. I most decidedly think so. It has been said of the measures proposed that it was not intended to give to any commission the power to make all rates, but to make a rate only after an investigation of a specific complaint. But I wish to say this, and I believe it to be a fundamental truth, that there can be no power to make any rate unless that power extends over it all; not all at once, but it must ultimately lead to that.

The CHAIRMAN. I do not believe you caught the idea that I tried to embody in that question. The Commission would not be permitted to change a rate or to fix a rate until after they had determined that the rate was unreasonable, not simply unreasonable, perhaps, with reference to that particular commodity and that particular town and that particular distance, but unreasonable in the view of

~~an~~ officer called upon to look over the whole subject of transportation; ~~and~~ would he not be required in the discharge of that duty to look ~~to~~ all of these laws of commerce and these necessities of localities ~~and~~ this principle of competition between markets in determining ~~that~~ question?

Mr. BIRD. Theoretically, yes, sir; practically, I think he could not do it.

Mr. SHACKLEFORD. Let me ask you just one question there. If ~~that~~ were to be done, would not that be substituting the discretion ~~of~~ the Commission for the laws of trade and the laws of nature, which largely determine those matters?

Mr. BIRD. Yes, sir; that is the vital point. What I want to make ~~clear~~, Mr. Chairman and gentlemen, is the fact of this intense rivalry between localities, these sectional questions. Take, if you please, the ~~long~~ controversy between the cities of Chicago and New York regarding the traffic, and rates charged thereon, to the territory south of the Ohio River and east of the Mississippi River. There is an intense rivalry. Neither party believes itself justly treated. Take, if you please, the intense rivalry between Chicago and St. Louis on traffic ~~to~~ and from beyond the Mississippi River. The whole face of the map is covered with such rivalries. The very moment that the power is vested in a commission to definitely settle those questions there will be such an avalanche of inquiry and complaint as was never known. I know hundreds of cases which are awaiting just such a proposition.

Mr. MANN. Would you take the specific case of the grain export trade by way of Chicago and New York, on the one hand, and by way of New Orleans or Galveston, on the other, as an example?

Mr. BIRD. Certainly. It is about 900 miles from Kansas City to New Orleans on the west bank of the Mississippi River. It is 500 miles from Kansas City to Chicago and it is something over 900 miles from Chicago to New York. The question is, How shall that grain from the Missouri Valley, from Kansas and Nebraska, reach foreign ports, whether through Galveston and New Orleans, or whether through Chicago to the Atlantic seaboard? Now, we may have a rate, it may be necessary to make a rate, from Kansas City to New Orleans which by itself would scarcely be found compensatory. The conditions of trade generally in that district must be understood and must be investigated to ascertain whether such rates can be made profitably. We find lying along the Texas Pacific and the Iron Mountain road vast bodies of timber that seek a northern market from the very territory in which this grain is produced. Taking the two articles of trade in connection, one north bound and the other south bound, rates may be found which will move the grain to those ports with some profit, and which may move the lumber back into the grain-producing territory with some profit; but in the absence of either the other would not be profitable. And a rate is found to move that grain perhaps.

I happen to know, as my attention was called to this matter last summer, when there was a large movement of wheat, a large production of wheat, in Kansas and Nebraska and Indian Territory, and not one carload of that grain was moved to the Gulf during the year 1904—I mean the crop of 1904. The lumber traffic at the rate which prevailed, and which still prevails, became very burdensome to the

carriers. Cars to move that lumber were carried necessarily from 500 to a thousand miles empty. You see how burdensome a traffic may be at some times which at other times is profitable. The great demand of New York and other Atlantic ports is that that grain shall be exported by way of the Atlantic ports, while on the other hand the people of the South are determined that their traffic shall be built up. The movement of grain by the Gulf of Mexico is comparatively in its infancy, and the people demand reasonable rates that it may move in that way. That is the status of the controversy, which is far-reaching in its effects. It was only a few days ago that the trunk lines from Chicago running to the Atlantic coast sought a means of enforcing local rates from Chicago to New York on export grain, sought to abandon the method which had previously existed, to make the basing rate from the Mississippi River, probably with good intention, and for the purpose of protecting the commission merchant's or middlemen's trade in the city of Chicago. There could be no just criticism of their effort; but the tendency was to increase the rate to the East, to the eastern seaboard.

It is the old question of rivalry; but above all things the greatest source of dissatisfaction originates and comes from the middleman. It is not the producer, it is not the consumer; the middleman is the man who makes the trouble. I do not deny that the middleman has a perfect right to be heard, a perfect right to demand and receive a reasonable comparative rate, and all that; but it may be worthy of remembrance that the producer does not complain because he has two, or three, or four available markets. The whole contention is from the middleman, the distributor of the goods, and these complaints must come to the Commission, or whoever is to control this matter, must come from all over the land, and I say, in answer to the question of the chairman, that theoretically the Commission will investigate, they will take into account all the circumstances so far as it is possible for human nature to do it.

Mr. STEVENS. In answering Mr. Mann's question you considered the movement of grain from the Southwest either by way of the Gulf or the seaboard. Would there also necessarily be considered in connection with settling of that question the movement of the competing grain from the Northwest, the Dakotas and Minnesota and those States, to the seaboard by way of the lakes and the North?

Mr. BIRD. Certainly.

Mr. STEVENS. Would there be any competition between those two territories that would necessarily be considered in determining that question?

Mr. BIRD. I think very likely all the facts relating to the grain trade, all the questions relating to supply and demand, and so on, must be taken into account; the question involves the whole country, and also the question of production and exporting.

Mr. SHACKLEFORD. If full power were given to the Commission to adjust these matters and preserve the just relation of rates, as they call it, is it probable that they would have to do it by raising the rates to the Gulf ports rather than by reducing rates to the Atlantic ports?

Mr. BIRD. Possibly, yes theoretically; but judging by our experience equalization would come by reduction.

Mr. STEVENS. I am not judging by experience; I am judging by the quantum of power that would be conferred on the Commission.

Mr. BIRD. If the higher rate would probably be reasonable in itself the only way to remedy it would be to advance the lower rate.

Mr. STEVENS. Say that the rate from Chicago to the Atlantic seaboard is now as low as it could be reasonably required?

Mr. BIRD. Yes.

Mr. STEVENS. And let us suppose that the grain rate to the Gulf is lower than the rate to the Atlantic seaboard, but within itself that it is remunerative to the carrier to engage in it. Now, how could that matter be adjusted by the Commission otherwise than compelling the carrier to the Gulf ports to raise their rates that are, per se, remunerative, up to the point where they will permit the roads to the Atlantic ports to participate in that traffic?

Mr. BIRD. The Commission would have to do just as the railroads have been trying to do for the last twenty years, to compromise, to try to please everybody.

Mr. ADAMSON. What would be the effect of the rate by way of the Erie Canal upon the rates to the North Atlantic ports?

Mr. BIRD. It has the effect of establishing the rates the railroads can charge.

Mr. ADAMSON. Grain can be sent cheaper by that canal than the rate to the Gulf, and does not that lower the rate?

Mr. BIRD. In the summer time, not in the winter.

Mr. ADAMSON. In the winter it does not compete?

Mr. BIRD. No, sir.

Mr. MANN. Suppose the Interstate Commerce Commission should, after a hearing, fix the rate on grain from Iowa points to New Orleans and Galveston, and in the same order fix the rate on grain to New York, Philadelphia, Baltimore, Newport News, and other Atlantic ports in such a way that either they would establish the actual rate or else establish the actual differential, so that that rate could not be varied without a further hearing and order of the Commission, which might or might not be had within a shorter or longer length of time; what effect would that have upon the communities and the shipment of grain and the routes?

Mr. BIRD. It depends largely upon which side of the question you are looking at it. I do not think it is in the power of anyone—the Commission or any body of men—to fix an arbitrary differential which shall govern matters of that importance that will not involve great hardships to the producer. Conditions change rapidly. A rate that might be a reasonable rate from St. Louis or Kansas City to New Orleans to-day might become very burdensome in a few months. The point I am trying to make and will bring out in answer to your question, perhaps in a roundabout way, is this, The burden of complaint will be in regard to differentials. I think that is admitted. That is the chief cause for demand for regulation—the regulation of differentials. There is no power that can establish and maintain a differential unless it has control over both the high rate and the low rate. Please to keep that prominently in view; they must have complete power or they will be ineffective. They must have the power to prohibit reduced rates. They must have the power to compel an advance of rate; or they can have no power over the establishment of a differential.

Mr. MANN. I understand you to mean that they must have the power either to absolutely fix two rates to two different points, or else

to establish relatively the actual differential, not merely to establish a maximum rate?

Mr. BIRD. The differential, yes; but in order to have the power to establish a differential they must have the power to advance or decrease a rate as they think best; they must have power in both cases or else they will have no power.

Mr. TOWNSEND. I think I understood you, in answer to the chairman's question, to say that you did not think that even after a full hearing, as contemplated by the various bills, the Commission could fix an equitable or reasonable rate. First, you said, in answer to his question, because it involved the consideration of so many other things and other rates it would affect; and, secondly, because they could not fairly accomplish that thing they could not take that into consideration. Now, when the railroads change a rate, does it not likewise and in the same manner affect hundreds of other rates?

Mr. BIRD. It does.

Mr. TOWNSEND. And if you raise a certain rate by the railroads is it not liable in the same manner to raise unreasonably the hundreds and thousands of other rates that depend upon that?

Mr. BIRD. It might be possible.

Mr. TOWNSEND. You admit that the Government has a right to regulate, do you not, and that the Government is interested for the people in the fixing of these rates?

Mr. BIRD. It is.

Mr. TOWNSEND. But you condemn giving to a commission the power which you admit ought to be possessed by the railroads?

Mr. BIRD. Not altogether so. I want to make it as plain to this committee as I can that the passage of such an act as is proposed would result in its becoming inoperative largely, difficult, and burdensome, because no such number of men can administer the affairs of this country in respect to the great traffic of the country.

Mr. TOWNSEND. Do the railroads of this country have any fixed scheme or method which they follow in fixing a rate—in raising or lowering a rate?

Mr. BIRD. No, sir; but there are so many diverse interests, so many elements of competition, that in fixing and attempting to adjust their rates the tendency is always downward. We do not glory in that as representing the railroads, but it is a fact. Please keep in mind that I have no purpose of obstructing any plan which this committee in its wisdom may report to Congress. I think the situation is so grave, the interests at issue are so numerous, that this committee should have its attention called to the practical difficulties. That is the only purpose I have in my mind to relate to you some of my experiences, which ought to have a bearing upon this question. We do not oppose, I do not oppose, the regulation. On the contrary, I think that wise legislation is what we do want. It should be reasonable and it should be protective to all the interests, not only to one. And you can not remove from the shoulders of the traffic men of this country the burdens that lie upon them so effectually as to put into the hands of a commission the power to control absolutely the question of differentials. It underlies a very large proportion of the cares that beset the traffic manager. I am not concerned especially about the disappearance of competition. That is your affair; it is in your charge; but I take it you want to understand the diffi-

culties that attach to these questions. May I cite again, Mr. Chairman, a question referred to very frequently, and originally by myself in 1902, and, I understand, subsequently by Mr. Bacon?

The CHAIRMAN. Do you prefer these interruptions or not? If you prefer to continue your argument without interruption, very well.

Mr. BIRD. I very much prefer not to have interruptions, because I am not a trained speaker and I lose the thread of my argument.

The CHAIRMAN. Very well, you may proceed without interruption.

Mr. BIRD. Let me illustrate the point I want to make by reference to a subject which has acquired some notoriety. I mean the case that came up between the Milwaukee Chamber of Commerce and the Minneapolis Chamber of Commerce. The main issue was relative rates between certain points in Minnesota and Iowa and other places to Minneapolis against rates to Milwaukee. The case was heard, perhaps, three times—at least twice. It was thoroughly discussed in a liberal manner, in a friendly spirit, between the Commissioners and the railroad people. There was no bitterness manifested. There was bitterness, however, between the rival chambers of commerce. It was a fight for supremacy; it was a fight which is going on all over this broad land. Finally, the railroad companies told the Commission: "We can not do it; you have laid down a rule for us to determine the differential. We are perfectly satisfied to accept your rule, but we can not apply it practically. There are difficulties with the geography of the railroads that prevent a reasonable adjustment of the rate, prevent such an adjustment as everybody has a right to expect. Therefore, if the Commission will fix the tariffs from all this producing country to Milwaukee and Minneapolis, respectively, we will put them into effect; we will put in force those rates." And the Commission said they were not competent to do that.

Now, following that, the railroad companies made another proposition. "We will select one or two or three members from each of these boards of trade or chambers of commerce, and if they will agree upon these tariff rates we will adopt those rates." And the effort was made. That committee did agree in a restricted territory. I think the Chairman will remember my referring to this once before and to the fact that the accuracy of my statement was disputed. He will also remember that the chairman of the Interstate Commerce Commission was present at the time I referred to it and I asked him to correct me if I was wrong. The chairman will remember that no such correction was made. The fact is that that joint committee of arbitration between those two trade bodies did agree in a restricted territory, but they utterly failed in the whole territory, and neither was satisfied and nothing was done and that case has not been settled.

That illustrates the point I am trying to make. Complicated questions, one at a time, here and there might be settled. I do not speak slightly of the power of the Commission, of its ability, of its desire to do the right thing at the right time; it is only a question of possibilities. I want to impress upon your minds, and repeat in every possible way, the fact that the whole country, from ocean to ocean and from the Gulf to the northern boundaries of the country, is covered with trade bodies, each one fighting for supremacy—not what

the law grants to them, but what they think they can get by overpersuasion, by ingenious argument. There is just as much cruelty, just as much lack of honor, just as much lack of interest in other people's rights between communities as there is anywhere between individuals; they are the same kind—selfish—each seeking his own point of view. Now, the passage of this law would open the box. The country would be covered from ocean to ocean by these complaints, and I say that it is not in the power of any commission that may be appointed to justly adjudicate or attempt to settle these questions without working an evil upon the commerce of this country. They must have the power to regulate rates and prevent competition. They must give what the law regards, as near as can be—what? A relatively just rate; fair differentials. Who knows what those just differentials are? Who can tell what is a fair differential between a rate from Kansas City and St. Louis on corn to Liverpool and a rate on corn from Chicago to Liverpool? Who can tell what the rate should be on corn from Kansas City to New Orleans and to Belgium, and the rate to Liverpool? Who can tell these things?

It may be practicable, proper, under the circumstances that exist, to move grain from Chicago, New York, or Baltimore at a comparatively low rate; there may be a great incoming tide of traffic in the opposite direction that makes a low rate profitable. Shall the people of the United States be deprived of the benefit which would accrue under those circumstances? Because there is a large amount of timber and lumber from the Southern States and Texas and Louisiana and Arkansas to the Northwest, must the grain growers of Kansas and Nebraska be deprived of the benefits of that movement? These are questions which they must consider. I only want to make it as plain as I can, if such be the case, that there are an army of traffic men, owners of railroads, officials of high standing present—those who are charged with the welfare of their properties, who study daily and hourly to see how cheap they may move the traffic of the country with some profit to themselves. There are many circumstances and conditions which affect the subject, peculiar conditions existing to-day which to-morrow may be gone, or which exist to-day and which do not apply through a season, and which should not govern or regulate in other seasons. Is it proper to deprive anyone, any community, any other producers, of the benefits which may be derived from a temporary condition of affairs? Not long ago—not many years ago—the principal movement of white pine lumber in the Middle West was from north Wisconsin and Minnesota. The cars had to go south loaded. The merchandise tariffs made at the time were remunerative because the cars had to go. The white pine timber is now cut out; it has almost disappeared; there is not more than two or three years more of that timber to be cut in northern Wisconsin.

Now, the railroad rates, established under very favorable circumstances at that time, are still in effect. They have not been advanced, but they are very much more onerous now than when they were established. The fact that those rates remained the same for some years is urged as prima facie evidence that they are now extortionate rates. The fact is just the opposite. Now, conditions are changing in the opposite direction. There is now a large movement of lumber and forest products from the South that makes it comparatively easy to move grain to the South. For a long time yellow-

pine timber was the competitor of the northern white pine. It was a struggle of many years standing, until at last the white pine of that particular part of the North became about exhausted. Now comes the enemy of the yellow pine, a wonderful production of pine on the northern Pacific coast. It is being moved to the East, down to the Middle States. Very soon you will find that in order to maintain the rates profitably there must be a movement of grain for export by the Pacific coast. Who shall tell whether the rate on grain to foreign ports from Minnesota by way of the Pacific is a fair rate; who shall tell what is a fair rate from Chicago to New York as against the rate to Baltimore or Boston? Conditions change. Conditions which vitally affect rates are changing all the time: they change daily, they change every season more or less and make a rate that was possible yesterday impossible to-day, or vice versa.

These questions are all to be submitted to a commission of five or more commissioners, and their decision shall be practically final. It is proposed that when a rate has been found reasonable by those men that it shall be in effect for a period of years, I think. I believe there is no limit. At any rate, when they fix a rate it can only be reviewed or revised by that commission. Perhaps it would be wiser if that rate should be made to run a given number of years or given time before it could be revised, say a year. There are many reasons why it should be so. There are many men handling large traffic on contracts for a term of years. Take the coal business, for instance. They must know what the rate is going to be to make their contracts. And when you provide for such interests perhaps you will provide then for a continuation of a great burden upon the people.

I do not know that I have anything further to say to take up your time. If there are any questions, I would like to answer them if I can.

Mr. STEVENS. You stated, Mr. Bird, that the decision of the Commission would be final. Now, what you meant was that their decision would be final on differentials, provided it did not confiscate the property of the railroads.

Mr. BIRD. I do not know that the proviso was considered.

Mr. STEVENS. It would have to be considered, would it not? If a rate were confiscatory then it would be unlawful. If a rate were not confiscatory then the decision would be final, as between the parties?

Mr. BIRD. I think so; I think that is the general trend.

Mr. ADAMSON. I was asking you just now about the movement of grain from the northwest by the northern water route. You said the water route made a rate in the winter time but not in the summer?

Mr. BIRD. My answer was hardly correct. The grain moves in the summer time, but there is a period of closed navigation when the lakes still make the rate to within two or three months before the opening of navigation. The elevators are filled and they are subject to the rates which will be made in the spring; such rates are the controlling factor.

Mr. ADAMSON. You mean the railroads must come somewhere near the water rate to participate in the business?

Mr. BIRD. Yes.

Mr. ADAMSON. There are four or five railroad lines, are there not, that can be used to reach the eastern North Atlantic seaboard?

Mr. BIRD. Yes, sir; five or six.

Mr. ADAMSON. Then it would appear, if there were no further facts, that the railroads simply carry it cheap while they are compelled to meet the water rate, and as soon as that is removed they take advantage of the opportunity to raise their rate; and is there any reason why it is worth more to haul grain in the winter time than in the summer time?

Mr. BIRD. Yes.

Mr. ADAMSON. What are the reasons?

Mr. BIRD. Climatic conditions. It is easier to operate a railroad in good weather than in bad weather.

Mr. ADAMSON. At the time when the navigation is closed and the railroads take all the traffic there is a very much larger volume that they carry, is there not?

Mr. BIRD. I think not.

Mr. ADAMSON. Do you think not?

Mr. BIRD. I think on the contrary.

Mr. ADAMSON. Most of it is moved in the summer.

Mr. BIRD. That raises a question. If you will permit me, the great grain market—the flouring market for wheat—is at Minneapolis. The prices made by the miller dominate the whole territory of the spring-wheat belt. Now, there are two ways of getting that grain to foreign markets—by rail south from Minneapolis, and east through Chicago; or over the Lakes, using the State railroads between Minneapolis and Duluth. That is within one State. There it takes the water rate. Those conditions do result in a lower rate than would otherwise prevail from Minneapolis to the East—a very much lower rate. It is 400 miles from Minneapolis to Chicago. Shall the railroads running due west from Chicago, running out 400 miles, make a rate that has a just relation to the rate from Minneapolis? For the conditions that affect Minneapolis do not affect Iowa or eastern Nebraska. Those things are to be considered.

Mr. SHACKLEFORD. Under this power given to the Interstate Commerce Commission by these bills would not the Commission have authority to tell those water lines to raise their rates to a point to permit the railroads to compete?

Mr. BIRD. I am not familiar enough with this bill or any particular bill to answer that question in the light of its provision.

Mr. STEVENS. Suppose the Interstate Commerce Commission has no jurisdiction at all over water lines, as they ought not to have?

Mr. BIRD. Wholly by water?

Mr. STEVENS. Yes. What then?

Mr. BIRD. Then the water rates would dominate the situation.

Mr. STEVENS. Supposing that there was a through water line from Duluth to Montreal under one control, as there is, operated by a man who owns it, a first-class man. Would not that, then, practically control the situation in that territory?

Mr. BIRD. Yes.

Mr. STEVENS. Would not that have an effect as to the southwestern territory, then, in this way: In wheat for milling there is required to be a mixture of the hard wheat of the north and the soft wheat of the southwest?

Mr. BIRD. Yes.

Mr. STEVENS. Would not the market for that southwestern wheat then be fixed by the demand for it by mixing with the hard wheat of the North?

Mr. BIRD. Yes.

Mr. STEVENS. And that the price of that mixture would be determined by the water rate to the continent of Europe?

Mr. BIRD. Yes; that is a fact.

Mr. SHACKLEFORD. Then ought not the Commission to have power over that water rate to so regulate it that Chicago could get into the competition?

Mr. BIRD. They ought to have power, and if they are to control the rates of the country they must have it.

Mr. SHACKLEFORD. Has it not been suggested here to put the water transportation under the control of the Commission, the same as the railroad transportation?

Mr. BIRD. I was not aware of that. I have understood that when transportation is part by rail and part by water it is under the law and is subject to the supervision of the Commission; but when it is wholly by water I do not understand that the Commission had anything to do with it. But it is a fact that in order to control rates at all, to regulate differentials, the Commission must have power over all rates, whether high or low; they must have power to say that this rate is too low and you must raise it, or that this rate is too high and you must reduce it; although the tendency from our experience is that they would reduce the higher rate even although it was reasonable per se.

Mr. SHACKLEFORD. If the Commission had this power to adjust rates, if they were given full power to preserve the just relation of all rates, would they not be just as apt to say that rates were too low in some cases as too high in others?

Mr. BIRD. I think not.

Mr. SHACKLEFORD. Is not that a part of the power the Interstate Commerce Commission is seeking to have conferred upon them in order to preserve just relations of rates; that is, the power to increase the rates that they think are too low as well as the power to reduce rates they think are too high?

Mr. BIRD. Yes; but the point in my mind is this. That care has been exercised heretofore to prevent any restriction of competition—it underlies all the acts that have been passed.

Now, here is a measure which is the very opposite. Is it the intention of this committee and of Congress to pass an act which is revolutionary? I am speaking only as an individual, interested in the prosperity of the country. This is in the trend of suggested legislation. It is to create a monopoly greater than the world has ever known; to put the traffic of this country into the hands of half a dozen men.

Mr. SHACKLEFORD. Would there not be a relief from that if the railroads sought to have a law passed authorizing them to pool; making the Commission act as the trustee not only for the unified railroads, but also for the people at large?

Mr. BIRD. I do not know that the pooling of railroad freights is essential. It may be in some cases. I do not know but what in the long run it would be beneficial. I am in doubt about it, but I am

inclined to favor it. But what is the use of a pool if the rates are less than cost?

Mr. SHACKLEFORD. But could not the Commission compel them to be about cost, so that they would be fairly remunerative? If all the railroads were pooled and the Commission were given the right to raise or lower the rate—that is, to administer that trust in the interest of all the people, would not the Commission see to it that the railroads would earn fair dividends?

Mr. BIRD. Well, if any means can be devised to enable the roads to earn a fair dividend, then I think it would commend itself to the railroad people very strongly.

Mr. LAMAR. You say that quite a number of the rates are too low?

Mr. BIRD. Undoubtedly.

Mr. LAMAR. Why do not the railroads raise them?

Mr. BIRD. How can they? Under competition I may be making a rate that compels my competitor to put his rate down below what is reasonably profitable. So I go to my competitor and we agree on a rate, and then if we do and it is proved on us we go to jail.

Mr. LAMAR. What I mean is this: Those that are fixed too low are fixed by competition?

Mr. BIRD. Competition among themselves or competition between rival markets.

Mr. LAMAR. Does it almost necessarily follow that if railroads fighting among themselves have to in business make quite a number of rates too low, that then in order to even up they will make quite a number of rates which are too high?

Mr. BIRD. That is a popular fallacy.

Mr. LAMAR. Suppose it is the fact and not a fallacy. Who is to determine whether or not that rate is to exist, the railroads or a board of commissioners?

Mr. BIRD. I hope I have not made myself understood as opposing wise restrictive legislation.

Mr. LAMAR. But, Mr. Bird, I would like you to confine your answer to that question. If the public believes—and there is a thorough conviction in the minds of the public on that question—that not only hundreds, but thousands of rates may be too low, made in the struggle for business, on the other hand, the railroads have, in order to compensate themselves, made thousands of rates too high. Now, the public wants the rate reduced. The railroad will not reduce it. Who is going to settle that question? The railroad will not reduce the rate, the public wants it reduced; the railroad thinks it is about high enough, the public thinks it is too high. Who is going to settle that question?

Mr. BIRD. We have the courts, and the courts would settle it.

Mr. LAMAR. Take, for instance, cantaloupes and watermelons, strawberries, and other fruits shipped from my State in large quantities. Those people may ship by virtue of being buyers from the middleman or speculator. Thousands of them may pool together in carloads among themselves. They think the carload rate is entirely too high. The railroad says it is not excessive. Who is going to settle that question?

Mr. BIRD. The court.

Mr. LAMAR. The court?

Mr. BIRD. How else can it be settled?

Mr. LAMAR. You mean by each shipper going in and bringing a suit?

Mr. BIRD. No; not necessarily a shipper; anybody that is interested.

Mr. LAMAR. A suit for damages?

Mr. BIRD. Yes; anybody that may be injured.

Mr. LAMAR. That is exactly the point; that is what the people do not want to be subjected to. They object to interminable suits for damages, individually or collectively. They want to give to the intermediary body the power to fix the rate in this fight between the railroads and the people as to whether a rate is reasonable or not. Nobody wants an unreasonable rate imposed, but there is an irrepressible conflict between the railroads who fix rates on the one side, who believe them to be fair, and the public on the other side, who believe the rates to be excessive. And there you are. And if this body does not exist you will have suits with all the delays incident to them and trouble in solving the question. I am speaking on the point of the absolute right to fix a rate vesting in the railroad companies or the public through an intermediary body of some kind. I appreciate your argument from your standpoint, that it is too vast, too complex, almost too disastrous a power, you might say, to confide to men that you believe, I may say plainly, to be incompetent to do the business.

Mr. MANN. May I ask you one or two questions in reference to the subject of differentials, as a practical railroad man?

There are several or a number of roads carrying grain, say, between Chicago and New York and other Atlantic ports. Between Chicago and New York there are several roads that I think they call direct roads, or some term of that sort; and other roads that run in a more roundabout way. The roundabout roads get a differential, I understand?

Mr. BIRD. So called.

Mr. MANN. That is, they are permitted to carry grain for a little less price than the direct roads?

Mr. BIRD. I do not think that is so in regard to the carrying of grain; there is a difference in passenger rates. I think there is a difference in the merchandise rates.

Mr. MANN. Yes. I suppose, as a matter of railroading, it costs less to carry the freight on the direct road than it does on the roundabout road?

Mr. BIRD. Possibly not; it depends on the circumstances. But as a general proposition, certainly it does cost less for the shorter haul. But there may be conditions which make it profitable for the longer road to carry it for a little less.

Mr. MANN. The roundabout road carries it for less?

Mr. BIRD. Yes.

Mr. MANN. Have not the public a right to say that that freight shall be carried in the cheapest manner possible, and to require that the rates shall be made on the basis of the cost of carrying it by the most direct road?

Mr. BIRD. I think it may be so. I want to avoid confusion of terms in the use of the word "differential." There is a differential between the same points, between different railroads, to the effect that the road giving inferior service is authorized to charge a little less. But the

broad proposition in its general use is a differential, say, between St. Louis and Chicago and Kansas City and Chicago. There is a difference against St. Louis that is a trade differential.

Mr. MANN. Take the roundabout road. It carries merchandise from Chicago to New York. It must be supposed to make some profit or it would not carry the merchandise. Now, if it can afford to carry it at the rate it does carry it, ought not the direct road be compelled to carry it at a less rate than they charge, which is higher than the charge demanded by the roundabout road?

Mr. BIRD. I hardly think so. Assuming that the rate by the direct line is a reasonable rate in the first place, the circumstances may be such as to justify a longer road, a road giving inferior service, in performing that service for a little less money, because of this proposition: that there is nothing so disastrous to a railroad as no traffic; it is worse than having traffic at low rates. The making of rates is not an exact science. There is not a tariff in the United States, according to my best belief, that has been made on any scientific basis. No one has been found that knows enough to make such a tariff. The fact is that rates are made by comparison, compromise, and competition, and those are the underlying forces that determine what the rate shall be.

Mr. BURKE. What effect does the cost of service have upon rates?

Mr. BIRD. I do not think that anyone can make a tariff with sole reference to the cost of service.

Mr. MANN. You speak of the inferior service in carrying by the roundabout road.

Mr. BIRD. Yes; I mean the longer time required.

Mr. MANN. The goods get there, and it does not make any difference, unless the man wants them by a certain time. But if the roundabout roads can afford to carry merchandise for, say, 70 cents a hundred from Chicago to New York, why should the direct road, with the shorter haul, be permitted to charge 75 cents a hundred?

Mr. BIRD. I think the answer must be qualified. To restate it, if the higher rate over the short line is reasonable there may be circumstances, and often are circumstances, that justify the inferior route in hauling the same traffic for a little less money.

Mr. STEVENS. That is, to instance a case, the Baltimore and Ohio Railroad is a roundabout route, but hauls an immense amount of coal west, and they could afford to haul a certain class of freight cheaper to the east on that account?

Mr. BIRD. Yes, sir; they could afford to do it cheaper on that account. I know of a case where limestone of high quality is carried in large quantities to Pittsburg at a very low rate. Notwithstanding the rate is very low, it is profitable, because those cars are used, primarily, for hauling coal to tide water, and if they do not load back with something it costs nearly as much to carry them empty as it does loaded.

Mr. BURKE. What per cent of business is handled by a railroad company where the rate is not remunerative?

Mr. BIRD. I do not know, and I do not know anybody that does know.

Mr. BURKE. Is it not a fact that there is a certain per cent of freight handled by a railroad company at a loss?

Mr. BIRD. I think I know some rates about which there is a question. I do not think it is safe to say that there is a large per cent of traffic hauled at less than cost.

Mr. BURKE. At the same time you expect to meet competition.

Mr. MANN. May I ask if this is the basis upon which you fix freight tariffs, or many freight tariffs: That after absorbing your natural territorial freight business—

Mr. BIRD. Local business?

Mr. MANN. Well, your natural territorial freight business—that you then propose to make a rate upon other commodities which would not naturally go over your road, wherever you can obtain freight enough to more than pay operating expenses?

Mr. BIRD. I think there was a time when that was a dominating condition, but I think in the last ten or twelve years it has been fading away and there is less of it, and that there is very little of it to-day. It has been found that the policy works both ways, and it is disappearing.

Mr. LAMAR. One more question and I will not interrupt you any more. I would like to ask for my own information as to how you make rates, the principle upon which you make them, leaving out the questions of whether a particular rate is just or unjust or the trouble of the railroads between themselves; leaving out all these questions, is not one of the basic principles of rate making on a railroad, without reference to any particular railroad, based on the relation of the rates fixed for producing earnings to the capitalization of a road; in other words, will rate making on any road bear a direct relation to the capitalization of the road?

Mr. BIRD. I never knew a case in forty years' experience. I have never known a case where in the adjustment of rates the capitalization of a railroad was taken into account.

Mr. LAMAR. How does the question of paying a profit on the capital invested enter into the question of making rates? Suppose a railroad is capitalized at \$25,000 a mile and another railroad at \$50,000 a mile. I would not put a dollar in a railroad unless I expected a dividend on it.

Mr. BIRD. A good many people have.

Mr. LAMAR. If that be true, how would you invest except on the theory that the rates which the men controlling the railroad and operating it would make would earn a dividend on the stock and interest on the bonds?

Mr. BIRD. So far as I know about railroads I do not think I would invest a dollar in one. I do not think it is a good investment, as a rule. I think it may be very poor; it may not.

Mr. LAMAR. Some good business men have invested in them and built them.

Mr. BIRD. Building them is another proposition.

Mr. KYLE. You can build them and sell them.

Mr. LAMAR. I would like to have an answer on that question.

Mr. BIRD. I will endeavor to answer it.

Mr. LAMAR. I am a little bit surprised at that if that be true—that the fixing of rates does not have a direct relation to capitalization.

Mr. BIRD. I do not think it has; I do not think that the bonded and the stock debt of a railroad was ever taken into account in making up a tariff. The making of rates is not a science. I think it

can not be stated fairer than as I have stated it—that it is a matter of comparison, compromise, and competition. I know railroads hundreds of miles in extent where there are innumerable local stations, and yet where there is no strictly local traffic. There is always some other element than cost which fixes the rate.

Freight is classified in 10 classes, from 1 to 5 and from A to E, and besides that there are a number of tariffs which are known as commodity tariffs. They are grain, coal, lumber, live stock, and ore, etc. All freight has to be covered somewhere in that wide range of classification. Now, there is not a man alive that can tell what freight a particular class will furnish, how much a class will furnish, and you can not fix a rate on any one article knowing what revenue it will furnish.

Mr. LAMAR. The reason I asked this question is that when I was with the attorney-general in my State there was considerable litigation with the railroads, and the question came up, at least ultimately, as it seems to me it will always come up when rates are challenged, as to whether the roads should not be permitted to earn compensation upon their service rendered or money invested, some form of ultimate property rights; and in my State it has been determined time and time again, the question has been settled, and the railroads have raised the question directly, not only while I was there, but since my going out, the question has been raised with my successors in office, as to reasonable compensation on the capital invested. That is about the ultimate question. So I ask that with the view to the national effect of challenging the rates on all the trunk lines of the country. Is not that question of capitalization at least one of the basic principles? I ask that because I state frankly in our State when they come to tax the railroads we find they are worth \$6,000 or \$7,000 a mile and they are capitalized at \$40,000 or \$50,000 or \$60,000 a mile. I had not quite reached that question when I was there, but we were coming to it.

Mr. BIRD. Take a railroad capitalized at \$100,000, say, and it is entitled to a fair return on that money if it is rightly located. Now, how are they going to get any tariff rate that will produce approximately that profit? The revenue is derived from thousands of items in the classification. It is a mere matter of judgment what relation the tariff on one class should bear to the tariff on another class. It is unknown what relation fifth-class freight bears to the total freight of the railroad or any other class bears to the total freight of the railroad. It is a matter of evolution, of continued experiment, but underlying it all in fixing the rate on any classes of freight there is a controlling power of competition somewhere, somehow, and I have never yet in my forty years' experience been able to make a tariff with any reference to what the service was worth.

Mr. RICHARDSON. Right there in that connection, is it not commonly accepted and understood that if the Interstate Commerce Commission undertakes to fix what is called the reasonable rate, is it not based on an examination of what the railroad cost, its buildings, its expenditures for all of its betterments, and all of its equipment, and not only that, but its bonds, too?

If the Interstate Commerce Commission did not take all those things into consideration in fixing what it termed a reasonable rate, could not the courts hold, would not the superior courts hold, and

would it not be their duty to hold, that that was not a just, fair rate, because they were entitled to a fair profit on the consideration of all those things?

Mr. BIRD. I think so. I am not a lawyer and can not pass very intelligently on these subjects. But I want to put the question in a little different way, if I may explain.

Mr. RICHARDSON. Certainly.

Mr. BIRD. The court may hold that the railroad is earning more than it is entitled to. The Commission may hold in the consideration of a particular rate on a class of articles the fact that because the railroad is earning more than it ought to that the rate on a particular article is excessive, but that does not give any light on that one subject. If you are investigating the rate on groceries, on sugar, the fact that the defendant railroad is earning more than it ought to earn or less than it ought to earn affords not one ray of light upon the reasonableness of that one rate, because the charge for transportation is spread out upon all the articles that are transported, it is distributed, and there are varying rates for each class of freight. Now, what proportion is properly chargeable to sugar?

Mr. RICHARDSON. That gets back to the question of reasonable rates fixed upon the cost of transportation to the railroads.

Mr. BIRD. But what freights? It is very difficult to determine that because a railroad is earning more than it should that the rate on beeswax is too high, or because the railroad is not earning enough that the rate on dry goods is too low. It is the whole traffic upon which the transportation charge is levied by the railroads of the country in the adjustment of its tariffs and classifications.

Mr. TOWNSEND. I would like to ask you one or two questions in regard to the testimony you have given. Do you claim that there are any unjust classifications in existence now?

Mr. BIRD. No, sir; I make no claims; but I must admit that there are a great many claims that there are unjust classifications.

Mr. TOWNSEND. But what is your opinion about that, whether there are any?

Mr. BIRD. I know some cases which I would adjust in a different manner if I had the power.

Mr. TOWNSEND. The railroads themselves have recognized that there are unjust differentials existing?

Mr. BIRD. I think they may admit that there are unwise differentials.

Mr. STEVENS. You might be wrong in your decision?

Mr. BIRD. Precisely.

Mr. STEVENS. Or any other man might be?

Mr. BIRD. Probably; it is a matter of judgment.

Mr. TOWNSEND. Now, if there are any unjust differentials ought not that to be included in the powers given to the Commission?

Mr. BIRD. That is the whole thing.

Mr. TOWNSEND. Will you just answer me what your opinion is? Do you think, if there are any unjust differentials, that the Commission ought to have power to regulate differentials?

Mr. BIRD. I have not expressed my opinion on that subject, but I want to say this: The thing I am trying to get you to consider is what power you should give to the Commission, if you give them that power—I do not deny or admit—I only want to point out the prac-

tical difficulties which are confronting you. If you do admit that there are unjust differentials you must give somebody the power to fix them, and you can not give them that power unless you give them power over all rates, a power to advance the lower rates as well as to depress the higher rates.

Mr. TOWNSEND. Now, is it a fact that the railroads themselves have been unable to settle that question of unjust differentials?

Mr. BIRD. Because you gentlemen in your wisdom have said: "If you do you shall go to jail." Why? There is a penalty attached.

Mr. TOWNSEND. You do not deny but what the railroads of this country do make combinations, notwithstanding the fact that they are liable to go to jail?

Mr. BIRD. "The railroads" is a very broad term.

Mr. TOWNSEND. To your knowledge?

Mr. BIRD. I think they must. I think if not there would be more or less rate anarchy all over the country.

Mr. TOWNSEND. I want to ask you a question that I have asked several other experts here. Is it a fact that the differentials existing between the ports of New York, Baltimore, Philadelphia, and Boston is a matter that the railroads have been unable to settle among themselves and have voluntarily submitted to the Interstate Commerce Commission with an agreement to abide by the decision of the Commission?

Mr. BIRD. I believe that to be so.

Mr. TOWNSEND. And is it not a fact that this Commission is empowered under these bills to obtain all the information that you know?

Mr. BIRD. Yes.

Mr. TOWNSEND. And this Commission is supposed to be an impartial body?

Mr. BIRD. Yes.

Mr. TOWNSEND. Now, would it not be safe to intrust these interests to a commission having as much knowledge as you have, an impartial commission, as it would be to trust the people's rights entirely with the railroads?

Mr. BIRD. That may be so; I do not deny it.

Mr. TOWNSEND. Now, do you know of any article that is carried at a loss?

Mr. BIRD. No, sir; no more than I know of any article that is carried at a profit.

Mr. TOWNSEND. Yes; you can not tell that?

Mr. BIRD. No.

Mr. TOWNSEND. So that if you are carrying or transporting any product over your road it will be impossible for you to tell whether you are carrying that at a loss or profit?

Mr. BIRD. You can arrive at a very close approximation.

Mr. TOWNSEND. Could not the Commission do the same thing?

Mr. BIRD. If there were hours enough in the day and days enough in the year.

Mr. TOWNSEND. There are as many hours for them as there are for the railroads?

Mr. BIRD. Oh, no. Railroads are operating in diversified parts of the country—all over the country—independent of each other, working out this question; they cover it all.

Mr. TOWNSEND. You spoke something about the courts. Do you believe that there should be a separate court established to determine these questions?

Mr. BIRD. I hope you will excuse me from answering any questions of a legal character.

Mr. TOWNSEND. All right.

Mr. RICHARDSON. I have not heard all of your statement, but right here, if you are willing to give it, I would like to have your opinion as to whether any legislation at all is needed on the subject of regulating railroads by the Government or any further legislation than we already have.

Mr. BIRD. I do not believe there is.

Mr. RICHARDSON. You have read this, have you not?

The Government must in increasing degree supervise and regulate the workings of the railroads engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect and to stay in effect unless and until the court of review reverses it.

That is the President of the United States. You do not agree with him on that?

Mr. BIRD. I do not in detail—

Mr. STEVENS. I would like to ask one question. You stated that you had no particular scheme in planning a system of rates. Do you have precedents? That is to say, because a certain rate was made at a certain time is that a precedent in the sense that a precedent is established by the ruling of a court; is that a precedent for making other rates?

Mr. BIRD. I do not know that I have your question precisely in my mind.

Mr. STEVENS. You understand that courts very often in citing cases establish precedents?

Mr. BIRD. Yes.

Mr. STEVENS. Do you have that in mind at all in making your rates or changing your rates?

Mr. BIRD. We must be governed more or less by precedent; but precedent is a very dangerous thing unless all the circumstances and conditions which lead to it are duly considered.

Mr. STEVENS. It always is, of course.

Mr. BIRD. And the trouble is railroads have been making precedents in that way which have been accepted by the courts and commissions as ones which afford a fair standard, whereas they may be exceedingly unfair; the conditions may have changed. As I said before, a rate on lumber from Texas to Chicago may be reasonable, may be perfectly fair, if there is a compensating tonnage south bound; and if that south-bound tonnage disappears, then the rate which has been established and has been made to appear as a precedent would not longer be a fair precedent and it would not be fair to judge by it; it would not be a fair standard any longer.

Mr. MANN. The Interstate Commerce Commission reports that in the year ending November 30 last there were over 162,000 new tariff schedules filed with that Commission, most of which, as they in-

formed me, contained changes in tariff rates. From your own experience can you say in your case what proportion of those have been made on the initiative of the railroad and what proportion have been made at the request or suggestion or complaint of communities or shippers?

Mr. BIRD. I have not been actively engaged up to within the last year and a half or three-fourths in establishing tariffs or changing them and have not been in touch with them all of the time. I believe that in most cases, a large percentage of the cases, it has been on public demand. I think, in the very nature of the case, it may be taken for granted that a change of rate has been made to meet some local demand.

Mr. STEVENS. Could you give any estimate as to the proportion of traffic on your line or the Northwestern Railroad which moves on commodity rates and what proportion moves on class rates?

Mr. BIRD. You must understand that there is a commodity tariff and a commodity rate. The commodity tariff is the grain tariff, which is fixed, and so with live stock and lumber and coal, and so on. They are all commodity tariffs. The rate that is made for some particular purpose, to meet some necessity, is called a commodity rate. I could not begin to tell you what percentage is moved on commodity rates, but it is not a very large percentage. It can not be.

Mr. MANN. It is the commodity tariffs I have in mind.

Mr. BIRD. A commodity tariff should be regarded as in no respect different from a tariff, because the tariff usually prescribes rates on freight in classes 1 to 5 and A to E, and on the other side of the page, facing it, is the rate on grain and lime, lumber, coal, iron, and live stock, and so on.

Mr. RYAN. Carload lots or more?

Mr. BIRD. Yes. In the classification from 5 to E they are carload lots; less than carload lots, from 1 to 4, inclusive. The commodity tariff is one thing and the commodity rate is quite another thing, and when one says the commodity tariff is quite a large percentage that is true, but it conveys a wrong impression. The commodity rate from Chicago to Rockford on raw material for manufacturing purposes is a commodity rate.

The CHAIRMAN. Our time is up.

Mr. BIRD. I thank you, Mr. Chairman and gentlemen of the committee.

Thereupon, at 12 o'clock, the committee adjourned until to-morrow, Tuesday, January 24, 1905, at 10.30 o'clock a. m.

TUESDAY, January 24, 1905.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. A. C. BIRD—Continued.

The CHAIRMAN. You began on the explanation, or at least I thought you did, of why a railway company would accept a rate or establish a rate that was not a remunerative rate. I wish you would explain why that might be.

Mr. BIRD. A rate may be so low that it will not contribute fairly to the general expenses of the company. It may be so low that if applied as a basic rate the whole traffic would be unremunerative, but at the same time it might be big enough to more than pay the actual cost incident to its own transportation, and thus contribute something toward the general expenses of the company. It has been held frequently, I think first by Judge Cooley when chairman of the Commission, that that was a correct view of the subject. I can not state cases in detail, but I am quite certain the same opinion has been announced by some of the judges of the United States courts. I am not sure on that point. It is a fact that the railway companies have proceeded on that theory, more in the past than recently, and for this reason: Rates made under such circumstances have been taken and have been regarded by the State and interstate commissions as a voluntary act, and therefore a just criterion as to their reasonableness and fairness, and such rates have been used often for the purpose of making other rates, and the practice, although it continues to such extent, is not as general as it was, because it is considered hazardous to do so. There was one limitation that I should have put upon that. The opinion among transportation men has been that if the rate paid more than the actual cost incident to its own transportation, and did not unfavorably affect other rates, then such low rate might profitably be made.

Mr. RICHARDSON. Did I not understand you to say the other day that the common popular idea that a railroad ever made low rates was a fallacy?

Mr. BIRD. What is that?

Mr. RICHARDSON. Did not we understand you the other day, in answer to Mr. Lamar, to state that the popular idea that a railway ever established low rates for a certain purpose was a great fallacy? You used that language, did you not?

Mr. BIRD. I do not recollect that exact language. I do not get the connection in my mind as to what was being discussed.

Mr. RICHARDSON. In answer to a question by Mr. Lamar, who was sitting just to your right, as to whether, when a railroad made a low rate, it did not make it sometimes for the purpose of discrimination, you answered that.

Mr. BIRD. I think that answer might be in the negative. I do not know any case where rates have been made low deliberately and purposely for the purpose of discrimination. I do not recall any.

Mr. RICHARDSON. I do not recall it distinctly myself. I was asking you for information.

Mr. BIRD. I do not recall any place where the railroads made a low rate purposely and deliberately for the purpose of creating a discrimination, but I think they have made rates low, as I have described, which may have been considered by others as having been made for the purpose of discrimination.

The CHAIRMAN. Is it not true that the revenues of a railroad company are applied to four purposes, the payment of what you call fixed charges, the payment of maintenance of track and equipment, the cost of the movement of freight, and the payment of dividends?

Mr. BIRD. Yes, sir.

The CHAIRMAN. Do you not often speak of and treat almost as though they were separate those four funds?

Mr. BIRD. I am not an expert in railway accounting, but I know enough by induction to know that the expenditures of a company are classified by the auditors under certain heads, such as payment of interest, and so forth.

The CHAIRMAN. Is it not true, then, that a rate which would make its contribution to two of those purposes, say maintenance and movement of freight, might be desired, while it would not contribute at all, or contribute its share, to fixed charges or to dividends?

Mr. BIRD. It is true. It might be narrowed closer than that. It might contribute to only one, such as the cost of transportation. That is one of the general heads of the expense account. It might contribute more than its share to that item simply, but nothing to the other three general heads.

The CHAIRMAN. By "cost of transportation" you mean those expenses that are appropriated to the movement of trains?

Mr. BIRD. Yes, sir.

Mr. TOWNSEND. Is it not true, also, that you keep, or should keep, another account as well, namely, betterments, or whatever you choose to call it?

Mr. BIRD. I only have the most general knowledge of railroad accounting. I know, as I have said, by hearsay and by being in constant touch with the general affairs, that these accounts are kept, and they are distributed primarily under three or four heads, perhaps, and then redistributed under branches of each general head—maintenance and betterment, and all that sort of thing; and those accounts are all kept very carefully, and there are reports made under each to the Interstate Commerce Commission, and just how they are classified, and so forth. I think they are spread very fully and explicitly on the records that are sent down to the Interstate Commerce Commission.

Mr. TOWNSEND. According to your testimony yesterday—and I believe it has been the testimony of others—you do not know exactly how to go to work to fix a particular rate, not knowing what it costs to move that particular product itself, so that at the end of the year, or at the dividend period, whatever time that is, you look over and determine whether you have made any money or not, and you determine by that whether your rates are sufficient or not?

Mr. BIRD. Whether the rates in the aggregate are sufficient.

Mr. TOWNSEND. Whether in the aggregate they are sufficient or not. Now, if it is true that you have been carrying at a loss and you have had a rate that is lower than it ought to have been, but you still have made money, is it not true that you have had some products that you have carried in excess of a reasonable rate?

Mr. BIRD. It does not necessarily follow. It would depend largely on the final result. If the final result showed that the property had earned more than its value entitled it to, I think in that case your proposition would hold good.

I ask, Mr. Chairman, to correct one statement in what I said yesterday. Mr. Richardson asked me a question and read from a paper a certain extract from the message of the President, and asked me if I disagreed with him. I answered simply in the affirmative that I did. I want to amend that by adding the words "in some detail."

The CHAIRMAN. Very well.

STATEMENT OF MR. S. H. COWAN.

Mr. COWAN. I appreciate the position of the committee in respect to time, Mr. Chairman, and if you will give me forty minutes I will get as far as I can in the presentation of the arguments and facts which I wish to produce before the committee, and then if there are still further facts I want to lay before you I will call the attention of the committee to it.

The CHAIRMAN. With the number of gentlemen who are here this morning to be heard, we can give you only thirty minutes, I am afraid.

Mr. COWAN. I think, considering the great importance of the interests I represent, and the great amount of freight which they have to pay, I ought to have more time, but I accede to the committee's desire.

I understood that it would be necessary for the committee to limit the time of the witnesses, not that they desired to prejudice anyone at all, but because time is important. I therefore have prepared a statement which goes into the matter somewhat in detail, but not more so than ought to be done to present to you what ought to be known to every member of this committee. I beg the attention of the committee for the purpose of calling attention to the matters which I have stated at length and more in detail in this paper than I can state them here this morning, and I make the request that this may be printed as my statement on these subjects; and when I have finished I will hold myself ready to answer any questions that any gentleman desires to ask, if the time is given to do so.

I quite agree with Mr. Bird and a number of these railroad gentlemen, that you have before you a very important question. I have had some experience in this matter. Not in the way of bragging about it, but in the way of stating a fact, I will say that the Cattle Raisers' Association of Texas, which I represent, engaged in the business of undertaking to bring before the Interstate Commerce Commission, and to have determined, the question as to whether or not the terminal charge of \$2 a car at Chicago, put into effect by an agreement on the part of the railroads in 1894, was a reasonable charge. The cattle producers and shippers in every Western State, including all of the States in which that business is carried on in the western part of the country, west of the Chicago meridian, were interested to the extent that there have simply been added \$2 a car above a long prevailing rate for the delivery of their live stock at Chicago, and some millions of dollars have been paid out on that charge.

The Cattle Raisers' Association of Texas undertook a prosecution of a case before the Commission in 1896. I have had to do with that subject since that date and have carried the case through the Commission, through all of the courts, and then back to the Commission again. It has been tried; the testimony has been completed and is now ready to be briefed to be submitted to the Commission for decision. At the same time I have represented the Chicago Live Stock Exchange in a case before the Commission involving the right of the railroads to charge the shippers a higher or greater rate for the transportation of cattle than they charge the packing houses on the Missouri River for a longer distance. That case was decided a few days

ago, and it was held that such a discrimination was unjust and unlawful and that the shippers are entitled to a rate of 18½ cents a hundred pounds for the shipment of cattle to Chicago if the packers are entitled to 18½ cents per hundred pounds for the dressed product. The decision was manifestly just and ought to be enforced.

The Cattle Raisers' Association of Texas have deemed themselves injured by the action of the railways in advancing the rates, and last February they filed a case before the Commission, and that has involved all of the southwestern rates and all of the rates from the southwestern territory to the northern ranges, and therefore the cattleman in every State west of the Missouri River is vitally interested in that case. It was filed in February, and the greatest expedition has been practiced in the taking of the testimony, and all the evidence is completed and ready to be submitted to the Commission. Several hearings were held, at Fort Worth, Denver, at Chicago, and at St. Louis. Twenty thousand pages of evidence have been taken, and that evidence is now on file with the Commission, and it has taken not only days, but weeks, to hear that testimony in a case that involves annually an expenditure for advance in rates alone of \$3,000,000 for the cattle interests situated south of the north line of South Dakota and east of a common point in the State of Colorado—not \$3,000,000 at one time, but \$3,000,000 for each year.

Now, the question is, when we have challenged these advances, if the Commission shall find that they are not justified, shall that order be put into effect or shall we continue to pay what a body appointed by the law has said is an unjust and an unreasonable rate? The great danger which confronts this committee is in speedily undertaking to make a law without an efficient understanding of the present law and its operation and effect and the practice under it. When I say that it is a grave danger I speak deliberately, and I hope that the committee will consider that it is a matter of great importance to determine what rights the present law gives and what remedy the present law gives.

I will not be able in the time that I have to follow the consecutive order in which I have these things arranged here and state them section by section so as to say all that I wish to say, but I desire to call attention to the things which occur to me within the time that I have.

There is no basis for making a rate. That seems strange to the laity. It seems strange to persons who have not had experience in it, and some of the gentlemen were astonished at Mr. Bird's statement of yesterday that they could not fix a rate except upon competition, compromise, and, I believe, he finally said a guess. It is a guess. A rate on a particular commodity, so far as the matter of reasonableness is concerned, is a guess. It is a guess because it can never be known what profit it will produce. No man knows. I offer here an exhibit from the testimony of traffic men representing the Burlington, the Chicago and Northwestern, the Santa Fe, and some other lines to show the testimony that they have deliberately given upon cross-examination as to how they can fix a rate, and if they fix it upon the basis of the cost of the service. I asked Mr. Gardner, the general traffic manager of the Northwestern Railroad, in a case involving an advance in the grain rates between the Missouri River and Chicago, if he could tell what it costs to handle

product like grain or live stock between the Missouri River and Chicago. He said he had been engaged in the business of handling freight for twenty years trying to ascertain that fact, and that he was no nearer a conclusion to-day than when he began. I concur with Mr. Bird exactly in that particular. I say that there is no basis for rate making, and those of you who may suppose that there is some peculiar knowledge in the mind of the traffic manager whereby he is able to make a rate, that he has a rule and a mathematical formula upon which he can fix a reasonable rate, are wrong, and I desire to disabuse your minds of that impression. I believe in no case before the Interstate Commission has there ever been a traffic man or any other railway official who has testified that he has any basis upon which to make rates. I take it to be a fact that the purpose of the railroads of this country is to earn money, just what I would do did I represent them, and just what you would do.

Therefore, carrying out the motive of making money, it is for the purpose of accepting what they must, as circumstances and conditions compel them, and taking all they can get, with the end in view of making the most money in the long run. I say that is an established fact, and I submit the testimony of principal traffic officials of western railroads to prove it. I have not time to go into this at length, but I will state that it is proven that it is demonstrable that that is true. That being so, it is no argument to say that when there is a dispute between the cattle raisers of the West and the railroads as to whether we shall pay \$20 a car more than we did in 1898, whether we shall pay \$20 a car more than we did for an average of ten years previous to that time, whether reasonable or not, it is a matter that can not be submitted to a commission. It must be submitted to somebody, else we must continue to pay the rate.

Now, who is to determine it? Every traffic man who has testified in that case, and possibly many of them have honestly believed it, has testified that the cattle rates are still too low, notwithstanding the advances which have been made. If so, may we expect that they will reduce them? May we leave it to them, to their tender mercies, to determine what we shall pay? I say that through the entire Southwest, including the territory in a line drawn along the southern border of Montana, and also largely among the shippers in Montana who ship from the South to that State, the universal opinion on the part of the cattlemen is that the freight rates are too high. Railroads have urged that they may be permitted to participate in the general prosperity of this country. They have urged that on that account they may be permitted to advance rates as prices go up. They have urged that in every hearing. When objections have been made to advances in making rates—in grain rates, in rates on class goods and commodities—they have testified that they advanced these rates in part because they believe they are entitled to participate in the general prosperity of the country. I will say that there is nothing to the theory; that it is a time-serving expression. But if there is anything in the theory they should at least share in the adversity when the adversity comes.

They have said that they did do that when prices were low and rates were low. I say if that be true, then the prices of cattle to-day, the impoverished condition of the cattle raisers and the feeders

through this broad land west of the Missouri River, call for the railroads to reduce their rates instead of advancing them. But they have not done it. Not only that, but they swear that their rates are already too low and that they would advance them were it not for the fact that some of the lines would not agree that it may be done. Undoubtedly that is true, and that is what is coming, and the people need a remedy more for what is coming than what is here. You may think lightly of this, gentlemen. Go to the West and investigate, and you will find that wherever the people have taken the matter up for consideration they have universally arrived at that conclusion. At every live-stock meeting that has been held where the subject has come up during the last four years resolutions have been passed asking Congress to pass a law empowering the Commission to fix reasonable rates; not that they wanted you to pass a law that will require carriers to haul traffic at less than a profit, but to the end that people might have a fair opportunity in the race for life—as the President says, for a “square deal.” The hope is that such bill as is turned out here will secure to the people that “square deal.”

There have been a great many things said in the newspapers and elsewhere, and there are expressions in some of the bills introduced here, and it is talked universally, about the railroads giving a bond to pay back to shippers. No more illusory thing was ever proposed. Gentlemen, in view of the existing law, the common law, in view of the existing remedies under the interstate-commerce act, it is perfect folly to talk about such a thing, absolutely so. What railroad company in this country is not solvent? Will you name one; can you name a single railroad company in this country that is not solvent to-day? Every one of the railroads in my country is solvent and good for every judgment that is rendered against it, and needs no surety and no security. The common law for a hundred years has said, as decided by the Supreme Court in the case of the Interstate Commerce Commission *v. Texas and Pacific Railroad Company*, that the railroads must provide fair, just, and reasonable rates; and in the *Call Publishing Company* case the Supreme Court held that a party has a right under the common law in a State court to recover judgment for an unjust discrimination or for an unreasonable rate charged.

Had you been aware, had you thought of the fact that that remedy exists complete to-day, as established by the Supreme Court of the United States, in every State court of this country having jurisdiction of the subject-matter? Have the shippers asked that a railroad company be made to give a bond? Have they? What shippers have requested that? If anyone has it is some man that is foolishly ignorant of the situation in this country or who is foolishly ignorant of the remedy provided by the common law, leaving out the question of the interstate-commerce act. In addition to that, the interstate-commerce act prohibits an unreasonable rate in the same manner as the common law. It prohibits an unjust, discriminatory rate, and according to the present decisions that is not materially different from what the common law provides, as decided in the *Call Publishing Company* case. It prevents undue preferences and advances. In other words, the common law intended that in transactions of the common carrier every person should have

a fair show to get what is reasonable and just and what everybody else gets.

In addition to the common law giving a remedy to recover in these cases (I have cited you a case where the Supreme Court has, in a comparatively recent decision, so held) the interstate-commerce act says I am entitled to recover for every damage and injury which may be done to me by any common carrier in violation of the provisions of that act, and that I have a right to go before any court and sue for that and recover it in any circuit court of the United States. What better remedy do you want than that? Why should there be a bond provided which may, perchance, compel a shipper in California to come to Washington for the purpose of prosecuting before the Interstate Commerce Commission a \$50 claim? Therefore, so far as the remedy is concerned with respect to recovery back of what is unlawfully paid, the law now provides the complete remedy for such recovery. And it is foolish to disturb that law.

Furthermore, the interstate-commerce act provides that the shipper may bring suit in the United States circuit court in the first instance to recover his damages, or he may file his claim before the Interstate Commerce Commission and have them hear the facts and let them say what reparation they shall recommend. And when they recommend reparation and the railroads are not a mind to pay it, then he can file suit in the circuit court of the United States and the findings of the Interstate Commerce Commission upon the facts are prima facie evidence thereof.

We have, in order to show that the rates on live stock are unreasonable from the Southwest, taken testimony that has cost the Cattle Raisers' Association and the Cattle Association of the West \$15,000. There are 20,000 pages of the testimony were it all written out. What shipper can undertake such an unequal contest; and any law that provides that he shall do it is but a pitfall and a snare that simply throws a sop to the public without any expectation that it can be subject to realization in furnishing an adequate remedy.

Therefore it is quite unimportant that the law shall provide, either the common law, the interstate-commerce act, or any law you may enact, that shippers may recover damages for the injury they have sustained.

Let me call your attention to the fact that a merchant situated in a little town east of a given commercial emporium in thousands of cases in this country must pay the rate of freight to the farther distant point and the local rate of freight back. I was told yesterday by a man from Nevada that when cattle are shipped from the country near Ogden, for example, into points in Nevada they must be shipped on to Sacramento and then back again to Nevada, in order to get that lower rate; and through that whole territory in the Rocky Mountains a rate of freight to a large extent is made from the eastern country as the rate to San Francisco plus the rate back. It is true that a rate of freight should not be fixed merely upon the basis of what division a railroad is expected to receive or on the lowest rate that it may be willing to make in competition with water transportation; but if they can afford to carry it at the cheaper rate it is quite evident that that is an admission that at least it is not carried at a loss. So you have at least that basis for determination.

I heard Mr. Bird speak of the grain rates yesterday. Do you know that it is a fact that people raising wheat around Wichita, Kans., pay as much freight to Kansas City, 228 miles, as the shipper in Kansas City pays to Chicago, 500 miles, and 2 cents more a hundred pounds? Do you know that it is a fact that the railroads ship from Kansas City to New Orleans and Galveston, 228 miles farther than Wichita, at 14 cents less than is charged from Wichita, Kans.? Do you know that it is a fact that wheat going to Liverpool and shipped from different points in Kansas must pay the local rate from that point to Kansas City, plus that part of the export rate back to Galveston over the same line? So that to-day from Wichita, Kans., 228 miles nearer Galveston, the rates of freight on wheat are 14 cents a hundred pounds more (if I am mistaken the tariff will correct me—I think it is either 14 cents or 14½ cents) than from Kansas City. I have those rates here before me. Now, if it is going as export, however, it is shipped at a rate almost twice as low as is paid by the local miller. There are thousands of those inequalities. I am not saying that they may not be justified. I am not saying that a commission may not find that circumstances justify them in many cases; but those conditions exist. I mentioned them for the purpose of calling your attention to the fact that the railroad company is no more capable of making a just rate to the public than is a commission which is just as well informed.

Now, the standards which the Supreme Court have marked out for reasonable rates have been laid down in several decisions. You must consider the fair value of the property, a fair return upon a fair value of the property; you must consider that you do not require the performance of a public service without due compensation; you must take into consideration the welfare of the public, the shippers, and the railways. You must take into consideration the cost of the service, the value of the service; and at last the courts have said that the best test of what a reasonable rate is is one that is established under free competition. Now, if that be so, I ask this committee if there is any test for reasonable rates to-day? Do you know of a rate that is established and fixed under free competition? They are not so established in our country. In December, 1898, the railroad lines serving southwestern territory met in St. Louis, at the office of the southwestern traffic committee, a committee to which all the southwestern lines belong, and they agreed among themselves—and I use the term advisedly—to raise the rates on live stock, and they did it, and they all published it on the same day. Now, they say that it was only a conference. What else does it amount to than an agreement? They conferred together for the purpose of bringing the thing about. Each one, they said, was acting independently. Be that true, they all acted to the same end, with the same means for each, and achieved it; and the exact results happened that each one expected would happen.

So, therefore, I say it is folly to talk about that not being an agreement. A little over a year from that time, in the early part of 1900, another advance was made in the rate. In 1903 another advance was made in the rate. And every one of them was made precisely in the same manner, and they have been maintained in the same manner. And there is to-day absolutely no competition with respect to the matter of rates in the transportation of live stock from the Southwest. That applies to class goods and commodities. For

more than ten years previous, for twelve years previous to March, 1903, there had been a fixed rate upon all class goods from St. Louis and all other points on the Mississippi River and east thereof to Texas common points, which includes Texas commercially. In March, 1903, the lines met, and after two or three days of parleying and consideration they advanced those rates from 7 to 20 per cent. Does that fix the standard of reasonableness? If so, then the Supreme Court is mistaken. I have cited in my statement a copy from the Supreme Court decision in the Joint Traffic case, in which it says if competition is not given free play such rate can not be used as the standard of reasonableness.

Now, I want to take up the subject with respect to who were injured in that case where these rates were advanced to common points. The rates were advanced on classes 1, 2, 3, 4, 5, A, B, C, D, and E, and a great number of commodities. There are three commodities that I recall on which the rates were not advanced. One was beer, another was vinegar, and the other was snuff. So I will not speak of those. But most of the other commodities were advanced, and all class rates. Gentlemen, who pays that? I suppose that amounts to more than a million dollars a year to the people of Texas. Somebody pays it. He who can name the price of his articles can always add the freight to that price. He always does do it. Mark that, gentlemen. Every trust in this country can name the price plus the freight for every article it sells. Every manufacturer who can name the price of his article can add the freight to it. So they do not suffer by it. It may be no wonder that they are not here.

The railroads desire to participate in the prosperity of the country, and they may say to the steel company "Seeing you are so prosperous we will participate in it, we will add something to the freight rate on steel rails." The steel trust says "Very well, it doesn't matter to us, we sell f. o. b.;" and so it is with respect to a great many commodities. Sugar, for example; tobacco, for example; agricultural implements, thousands of things that are produced in this country, the seller can fix the price and add the freight. The wholesaler undertakes to do that when he sells to the retailer, and the retailer undertakes to do it, if he can, when he sells to the public. The fluctuation in prices may load the freight off on the wholesaler in one instance, the jobber in another instance, or the retailer in another; but, as a rule, gentlemen, the consumer in the country pays it in little dribs as he pays the price for articles he buys. So it is with the man who produces wheat, corn, oats, cotton, live stock—and fattens them in the country—he can not fix the price of that which he sells, and therefore he must stand for the freight.

How much wisdom, then, is there in providing or undertaking to provide a method whereby the railroads, apparently undertaking to act fairly and pay back to the shipper that which he has lost, can never find the injured party? He will not be found in 75 per cent of the cases. There may be 25 per cent where you could fix it that a certain person was injured by paying the freight. Therefore, I say of the least consequence in this matter is your effort to provide that the railroads will make a recompense to whoever is injured. Take a merchant whose business has been destroyed. How can you pay him back for that? Not merely the rate of freight on

what he might have shipped! These things exist throughout the entire country. You may believe it, they are not able to pay money to come here before you; they can not come here and pay hotel bills and their expenses; they can only send their representatives. If you desired it I could have a hundred cattlemen here from all over the Western country who would like to be heard. Mr. Mackenzie is here and if you wish to ask him any questions, he represents one of the largest ranches in this country, and he has come here with me to present our side of the case. If you want to hear him he is here. The fact that they do not appear is of no significance, except to show that they are not able to appear and that they have to depend on their Congressmen to represent them in respect to these matters.

In the matters which I have presented here I have reviewed the interstate-commerce act section by section and stated what each provides. I have undertaken to take up almost every subject that, in my opinion, should be considered, and I will ask that if it is printed the members of the committee, if they see fit, will look it over, and they may find some matters of interest in it.

It has been said that because the rate per ton per mile has generally decreased, therefore there has been a tendency downward in rates. Gentlemen, that is not so in my country. There is an exact method of determining whether the rates have declined or not. Go to the files of the tariffs in the Interstate Commerce office and see if rates have declined on live stock, if they have declined on wheat, if they have declined on corn, if they have declined on coal, if they have declined on lumber, if they have declined on hay. Have they declined on fruits and vegetables? Name one of them, gentlemen, on which the rates of freight in the Western country have declined. Yet how silly it seems for men to come here and undertake to show you that rates have declined because the rate per ton per mile has declined.

That is a perfect fallacy. No man undertakes to make a rate on a basis of a rate per ton per mile. The aggregate rates per ton per mile upon an aggregate of all freight is a mere curiosity in figures and of no practical importance. While the rate per ton per mile on a given commodity may have declined, the rate per ton per mile on wheat, the rate per ton per mile on grain, on hogs, and cattle, and especially on the classes throughout this Southwestern country, instead of having declined, have increased in every instance; it has increased on those great commodities that furnish the railroad companies their support in that entire country. And yet I have no doubt the rate per ton per mile for the aggregate of freight shows a decrease. And why? Because the increase in the amount of freight in the way of lime, sand, brick, castings, machinery, stone, and a thousand and one heavy articles that take a low rate of freight and a heavy car loading has been very great, and therefore when you ascertain the rate per ton per mile by dividing the total mile tonnage through the total receipts you can see what an enormous amount this low-rate freight will be.

I have had made out, and it has cost me \$10, a statement showing what the comparative tonnage has been on six important lines in the West since 1898, extending down to the present time. The total tonnage has increased 40 per cent. So that whatever prosperity the rail-

roads are entitled to participate in should be limited to the increase in the volume of traffic. That will always be automatic, and when a country is prosperous the shipments will be more frequent, and when the country is less prosperous the shipments will be less frequent. It will be automatic. But they should not be permitted simply from the love of money to reach down into the pockets of the people and levy a rate of freight whenever they please and where they please and take away a large part of the profits which the producers of this country are justly entitled to.

Now, another thing. Let us come to the cost of supplies and material. There have been a lot of statements made and published—statements in the newspapers, statements before this committee—in regard to such a great increase in the cost of supplies, material, and labor. In trying the case with respect to advances from common-point rates from St. Louis, it being the basing point, and therefore from all other eastern points to Texas, we took occasion to take exact testimony upon that subject, and we called such men as the vice-president and the superintendent of the St. Louis Car and Foundry Company; Mr. Nixon, the purchasing agent of the Missouri Pacific Railroad; Mr. Thompson, engineer of the Texas railroad commission, and the tie and timber agent of the Missouri and Pacific line, and we got exact testimony on the subject instead of resting it on the proposition that it has advanced such and such a per cent. I heard one railroad man testify that lumber had advanced 70 per cent. That is entirely a mistake. He did not know a thing about it. He simply had heard somebody say that. The largest, heaviest timbers have advanced, but ordinary lumber has advanced very little at the mills in Texas and Arkansas and Louisiana. These gentlemen have selected the lowest point of prices. They have not taken an average for twelve or fifteen years. They have selected the lowest point. Do you know whether or not wages are higher to-day than they were in 1892? Do you know, have you made any effort to ascertain, whether it is a fact or not?

Every railroad company files its annual report, in which is stated the number of days worked and the amount that is paid to every different class of employee. In here we have a table, in the brief that I am submitting as a part of my statement here, that shows a table of the rate of wages that is paid by the Missouri, Kansas and Texas Company, the St. Louis Southwestern Company, the St. Louis and San Francisco Company, the Missouri Pacific Company, the Texas and Pacific Company, the St. Louis, Iron Mountain and Southern Company, the International and Great Northern Company, the Atchison, Topeka and Santa Fe Company, the Gulf, Colorado and Santa Fe Company, the Chicago, Rock Island and Pacific Company, and the Chicago, Rock Island and Texas Company, for all their different classes of employees, for general officers, general office clerks, station agents, other stationmen, enginemen, firemen, conductors, other trainmen, machinists, carpenters, other shopmen, section foremen, other trackmen, switchmen, flagmen and watchmen, and telegraph operators and dispatchers. You can see by this table the exact average of the day's work from 1892 down to the present day. That is the way to ascertain these facts; the way is to get at the facts and not take general statements for them.

Now, again, copied in this brief is the testimony of such men as I have mentioned with respect to the cost of supplies and materials, naming the articles, naming the prices and what they cost and what articles they use, and you can see what the truth is in regard to that matter.

Also, we show in these tables that to-day a dollar expended for labor pulls more tonnage, earns more money, than it ever did in the history of railroad operation in this country. A dollar expended for coal to-day earns more money and draws more traffic than ever before. There has been also a great increase in the density of traffic on these railroads, and we have a table showing that. So that the economies introduced by reason of the heavier car loading, by reason of the heavier train loading, the greater density of traffic per mile have more than offset all of the expense that has been added to the railroads by reason of the increase in the cost of labor and material. This is all plainly demonstrated by this brief which I have here, which I will make a part of my remarks, and these facts are practically undisputed. I have heard the mistaken statement made by gentlemen—gentlemen who are no doubt honestly mistaken, and who believe what they have said—that the cost of repairs to cars by reason of the safety appliances required has increased wonderfully.

I have taken occasion to have made out a statement which shows the cost per mile of line and the outside cost of the repairs and renewal of cars, locomotives, and every other item (fifty-odd items in all) of expense of railroad operation. If you want to see it you will have it here. It does not cost as much to-day by considerable per ton per mile hauled for repairs as it did in 1893, notwithstanding the supposition of some of these gentlemen to the contrary. In this case we took evidence in respect to the actual valuation of these railroads, and taking their earnings, we show what per cent they have earned upon the actual value of the property, plus the additions that have been made since they were valued. There are a great number of matters of importance embraced in this that if the committee desires to know about, or if the committee desires some of the material facts with respect to railroad operation—the cost of supplies and materials and labor, the amount of stocks and bonds per mile of road, and the amount of earnings, gross and net, per mile—you will be able to find the facts set forth in this brief.

Now, another thing: That the combination of railroads which advanced the rate to Texas did not stop with the railroads. I offer a statement from Mr. Haile, the traffic manager of the Missouri, Kansas and Texas Railroad, that they could not advance the rates unless the steamship lines from New York agreed to it. Texas is far more favorably situated for interstate rates than any of these interior States away from water transportation. But they went to New York and engaged with the steamship companies to advance the rate, and they did. That was the result, and it was all put into effect at the same time. You, who have not investigated it, do not know the extent to which the railway companies of this country, in their desire to make money, have combined for the purpose, not of making rebates, not of making discriminations, but of unreasonably advancing the rates to the people of this country. The railroads are greatly interested in having no rebates. The railroads are interested in

having no discriminations. It is the people who pay the freight, the producer and the consumer, who are interested in having a reasonable amount only to pay.

Much has been said in regard to rebates. The newspapers are in favor of stopping rebates. For whose benefit? For the benefit of the railroads. It will save them millions of dollars. Mind you, I do not believe in rebates. I think everybody ought to have a square deal in the race for life. But unless some law which will not only prohibit rebates and discriminations, but also unreasonable rates, is enacted, there can be no fair deal in the race of life in this country.

When the railroads desired to raise the rates on grain from Kansas and Nebraska, what did they do? They made an advance of a differential in the proportionate rate between the Missouri River and points in these Eastern States of 2 cents per hundred pounds, and that had the effect of advancing the rate 2 cents per hundred pounds on every bushel of grain raised in Kansas and Nebraska. What else did they do? They could not have done that unless they had raised the rate to New Orleans and Galveston at the same time, which they did. This Commission instituted an investigation into that at once. Why? Not because the farmers complained, not because they came forward and protested against it, because they probably did not have the means to do that, and perhaps did not know about the course to pursue; but because the Commission deemed it just and right that such an increase in rates should be investigated. It was an increase in rates to a higher point than had been actually charged in a great number of years. It simply needs a careful, painstaking investigation into the actual facts, gentlemen, to convince you what your duty is and how it ought to be performed.

I have seen in several bills the statement—and I think it has been put in honestly, I am not criticising men, I am talking about measures; I am not criticising railroad officials either, I am simply talking about measures; it is the standard that they fix that I object to—that the interstate-commerce court may pass upon the reasonableness of the Commission's orders. I have no doubt that the gentlemen who have appeared here and made statements in regard to this matter have honestly believed that what they advocate is wise, and I say again I am not criticising any of these gentlemen or criticising any of these railroad officials; if I were in their place I would do what they are doing, and so would you. But is that right for the public? They are looking out for their interests, and they move in mysterious ways their wonders to perform, but they generally perform the wonders. As I have said, I have seen in some of the bills introduced here—I have no doubt it is put in in perfect honesty, put in with the belief that it ought to be in; but I warn this committee against it—that the interstate-commerce court may pass upon the reasonableness of the Commission's orders. I say that you might as well not enact any laws; I say that when you do that you absolutely destroy the effectiveness of any law; because if the court is to substitute its judgment for what is reasonable and the Commission shall have found that a rate is too high by 1 cent a hundred, may not the court arrive at a different conclusion as to reasonableness and thus substitute its own judgment for that of the Commission? Having done so, what would be the result? The court, under the

law, could not fix a rate for the future. It will be destructive of the Commission's power and yet not constructive of anything in lieu thereof.

I am giving you warning about that because I fear it is so. I know it is not so intended. I know it is put in there with honest intent and the belief that the court ought to pass on the reasonableness of the Commission's findings. It will never do to do it. Let the court pass on the lawfulness of the Commission's findings, and then if the Commission shall not have pursued its methods according to the law creating it the court will set its findings aside. If it has taken private property without due process of law it will set its findings aside; if it has required the performance of public service without just compensation it will set its findings aside. Why? Because those things are violative of the Constitution. But if you substitute the judgment of the court for the judgment of the Commission on the facts you absolutely destroy the effectiveness of the legislative body fixing a rate for the people.

I ask careful consideration by the committee of that and I believe you will honestly give it.

I say another thing: That every inquiry in regard to a rate should be prosecuted by the Government. Are you going to require a citizen to undertake the herculean task of filing a complaint and carrying on the prosecution of it? In the first place, he must incur the enmity of the railroads with which he does business by such a procedure. Thousands of people can not afford that; they can not undertake the task of litigating with a half-dozen railroads; they have not the money to pay lawyers' fees or the expenses. Therefore any remedy which falls short of putting it to the Government to determine, first, whether the complaint is justifiable, whether it is probably a correct one, and, second, if it is, to prosecute that complaint, will be no remedy at all to the people. Mark it; that is the way it will turn out.

To-day it is said that no complaint is made of unreasonable rates, and there are very few. Why? Simply because no man feels that his interest is so great that he can undertake it. Yet in the aggregate there are millions of men who feel that they have cause for complaint. It so happens that with the cattlemen they are organized sufficiently to undertake it. That is the principal case of challenging the reasonableness of rate that I know of in the whole broad territory of our southwestern country. Coal rates were taken up by a coal and gas company at Denison, and the Commission held that those rates were unreasonable, and the railroad reduced them. The butchers of New Orleans said that it was wrong that the Texas and Pacific Railroad should charge \$15 more for 10 cars than it did for one car (\$15 more per car). The Commission heard that case and decided against the road. And Mr. Bird, representing the Texas and Pacific Railroad, as I suppose—it is simply a guess on my part—said that that was proper.

Any complaint submitted to the Commission should be first investigated and determined whether or not it is a proper complaint, whether it is reasonable, and if the Commission believes it is, then let the Commission use its own judgment to investigate the subject, but at Government expense and not at the expense of those poor shippers, who can not afford to incur the costs incident to carrying the matter on. I say that the Commission should determine the facts. It is

perfectly inconsistent with a legislative body—not itself determining the facts upon which it acts, and therefore it is consistent that any court shall return the reasons upon which they base it, providing they are constitutional and do not take private property without just compensation.

The CHAIRMAN. You have now occupied forty-five minutes.

Mr. COWAN. I thank you, Mr. Chairman and gentlemen, for your patience, and I ask that I may file this brief as a part of what I have said.

The CHAIRMAN. I wish you would mark those parts that you particularly desire.

Mr. COWAN. I have only incorporated in this brief matters that I believe are of considerable importance to every member of the committee.

Mr. BURKE. Have you the tables you referred to in your brief?

Mr. COWAN. Yes, sir.

The CHAIRMAN. Very well, you may file that.

Mr. Cowan filed the additional argument.

STATEMENT OF MR. MURDO MACKENZIE.

Mr. Chairman and gentlemen of the committee: I represent probably 80 per cent of the cattle growers of the West. I am not able to lay the matter before you in such a lucid manner as Mr. Cowan has done, but in a few sentences I am able to explain to you our grievances.

For some time past we have felt that the railroads have been discriminating against the section of the country from where I come. Up to 1898 we paid per car from Texas to the Northwest from \$55 to \$65 per car. After that they advanced the rate from \$65 to \$70, and to-day we are paying \$100 a car. We feel this: That if the railroad companies were in a position to pay their expenses at \$65 a car and make a little profit—or even if they did not make any profit at that rate—that the difference between \$65 a car and \$100 a car is too much. We feel, furthermore, upon investigation, that the cost to the railroad is not as much as it was then. It is not as much for this reason: They load us down with tonnage; they do not give us the same service. They had in vogue what they call the tonnage system. They tell us now that they have done away with that system, but that is not a fact.

I know from experience that they have not done away with it. Up to 1897 I could go to a railroad company and tell them that I would give them from 10 to 12 cars on a train and they would give me a special train. But now they will not move my freight unless they get the full tonnage of a train, the full tonnage that the engine is rated to carry. In many instances they overrate their engines, so that they will not make more than from 7 to 10 miles an hour. I have had shipments on the road—I have had from 3,000 to 5,000 cattle on the road and I have got a service of from 7 to 10 miles per hour.

Now, gentlemen, it would be impossible for me to tell you or explain to you the losses we entail unless you are cattlemen. In fact, I do not know about it myself; I am like Mr. Bird—I do not know how these things are arrived at, but I know the loss to us is enormous. The railroads have failed to give us service; they treat us as they

please, and we want to be protected. We do not want you gentlemen to feel that we came here asking for a club to break the backs of the railroads. We want protection. We want to feel that we have a board of arbitration between the shipper and the railroads. We want to feel that if we are paying \$100 a car the Commission will tell us that that is an unreasonable rate. If the Commission would tell us that that is a reasonable rate we bend to their decision; we are willing to pay it.

But we feel, gentlemen, that it is not a reasonable rate. We feel that the railroads were giving us a rate of \$65 from the Southwest to the Northwest, and to-day they are charging us \$100 per car. We feel, furthermore, that the railroads at one time charged us \$65 a car from Texas to Kansas City. What do they charge to-day? They charge us 34½ cents on a minimum of 22,000 pounds. They have changed the rate from the carload rate to the cents per hundred. They made the minimum 22,000 pounds, making us believe that they were using the divisor to give us the same rate as we had before; but if you take those figures you will find that in every instance instead of giving the rate we were paying before we are paying from \$10 to \$20 more. They thought they could make the cattlemen believe that they were getting the same rate, but it is not a fact that we are getting the same rate. Every man who ships cattle from the Southwest to the markets can tell you that he is paying to-day from \$18 to \$25 per car more than he did in 1896 to 1898. That, together with the service we are receiving, is more than we can stand, and if this condition of affairs will continue it is going to knock us out of the business.

Now, gentlemen, we do not feel that that should be the case. We feel that you are here to give us justice; we feel that you are here to do what is right by us; we feel that that is your intention, and all that we ask of you is to give an Interstate Commerce Commission the power to do this one thing: That they shall have the right under the law to correct any inequalities which exist.

Now, I can point out a case to you where we have to pay for the same service 6½ cents per hundred more than our neighbors in Colorado pay. In the point in Texas where I live I am 550 miles from market. Las Animas, Colo., is 550 miles. My cattle friend from Colorado has to pay 28½ cents per hundred and I have to pay 34½ cents a hundred. We can show the railroads, I think, by figures, that it does not cost them 1 cent more to carry our cattle than it does to carry the cattle of the man who lives in Colorado. Some years ago we had a meeting with traffic managers in St. Louis. Mr. Cowan has already referred to that meeting in his statement before this committee. We pointed out this inequality in the rates at that meeting, and we asked them to correct it. They admitted that we were right, but they told us that in order to put us on a more equal footing with the men in Colorado that they would raise the Colorado rate, which they promptly did.

Now, that is the way the railroads have, gentlemen, of correcting rates. They were perfectly satisfied with the rate they were getting from Colorado until we complained. When we made a complaint then they came forward and said, "We will equalize the rate by raising the other man's rate." Now, we do not think that is right; we do not think it is fair; in fact, we feel that it is very unfair, and we

ask you gentlemen here to prepare such a bill, and report it, as will give us protection under the law—that we may have a place to go where we know we will get justice.

I do not blame the railroad men; I have friends among them. I think that probably I would do as they do if I were in their position, and, on the other hand, they would probably feel very much as I do if they were in my place. I am satisfied when you look this matter over and consider it very fully that you will see that the cattlemen and the industries in the Southwest require your protection. We come to you hoping that we will get it, and we are satisfied that before you are through you will give us what we want. I thank you, Mr. Chairman and gentlemen.

The CHAIRMAN. There is a gentleman here from the New Orleans Board of Trade, Mr. Robinson, and we will now be glad to hear him.

STATEMENT OF MR. C. W. ROBINSON, REPRESENTING THE NEW ORLEANS BOARD OF TRADE.

MR. ROBINSON. Mr. Chairman and gentlemen, I represent before you the New Orleans Board of Trade. I am an untrained speaker; in fact, I think in twenty-five years this is only about the third time I have attempted to express my ideas while on my feet. By the courtesy of your chairman I am entitled to ten or fifteen minutes to lay before you some thought on this question.

I have sat here day after day and listened to the railroad men, and I submit that they have fully demonstrated one or two propositions. First, they have demonstrated that they are in favor of a fair regulation provided they are allowed to say what is fair.

Our contention is that an impartial commission shall be empowered to say what is a fair and reasonable rate.

Second, they have stated very clearly and demonstrated, I think, that they do not know and can not tell you how rates, how tariffs, are made. For twenty-five years, directly and indirectly, as a manufacturer and as a banker, I have been brought into contact with traffic managers, with rate makers, and I believe that I know how they make rates. The first principle on which they base rate making is the Robin Hood principle of what will the traffic bear? Illustrative of this principle is the question of grain rates from Chicago to the Atlantic seaboard. In the winter, when water competition has ceased to exist because of the closing of the water routes, they take what the traffic will bear. In summer time, when they must compete with the water routes, they take what the traffic will allow them to take. The manufacturers of yellow pine in the district covered by the Carolinas, Georgia, Mississippi, Louisiana, and Arkansas protested against a raise in lumber rates to the Central West, to all points north of Iowa, to all points in the Middle and Eastern States, to all points, practically, in which yellow-pine lumber was sold, a raise of \$8 per ton. At a hearing held in Atlanta, Mr. Culp, traffic manager of the Southern Railroad, was on the stand. He was asked to explain why this raise of rates on lumber was made. As nearly as I can remember his exact language, it was this: The railroad companies, desiring to share in the general prosperity of the country, looked around to see who could stand an advance in rates. In their judgment—mark you, in their

judgment—the manufacturers of lumber in the Southern States were prosperous and could stand a raise in rates. Therefore they raised the rates.

I heard a great deal about injunctions. I wish first, in passing, Mr. Chairman, to say that after listening to the clamor about injunctions we endeavored to get injunctions; we tried two judges of the United States court—one in Georgia and one in Mississippi—and they both refused us injunctions on the ground that they had no jurisdiction. Congress in its wisdom, gentlemen, sought to protect the producer of sugar in this country. They put a duty on imported sugar. The railroad traffic managers, in their wisdom, to an extent nullified this action of Congress, in that they raised the classification of domestic sugars, changing it from the fifth to sixth class, thus raising the rate on domestic sugar about 30 per cent, and at the same time they gave to imported sugar the lower rate of freight. I take it for granted that you are all familiar with that case and what the Supreme Court said about it.

Another proposition that the railroad people have demonstrated is that they have a good thing and they do not want to be interfered with. I can best illustrate this position by the story of the cow. Two negroes in Mississippi bought a cow in partnership. The elderly negro led the cow to his home and commenced at once industriously to milk her. This process went on for a week or more, when the younger negro came around to inquire as to his rights in the premises. The older negro grew very indignant. He said: "My having possession of the cow for all this time, I have vested rights, and for you to come here now and interfere with my milking would be a great outrage and clearly unconstitutional." This is the position the railroad people take. They have practically admitted to this committee that rates have been raised in a good many instances; that in some few instances they have been reduced. But the milking still goes on, and the manufacturers, the farmers, all over the country are feeding the cow, while these people are doing the milking. Now, we do not ask that the process be reversed, that we be allowed to do the milking, but we ask that a fair division be allowed us, and by a tribunal that is impartial.

I think there is a mistaken idea, as Mr. Cowan has said, as to what the people want, as to what they are clamoring for. All this talk about the stopping of rebates is all true. We want them stopped. The railroads want them stopped. Everybody wants them stopped. But we do claim and we do believe, and we are sincere about it, that the railroads are getting an unjust share for transporting our manufactured products and our agricultural products. Since I have been here I have heard with a great deal of surprise from the traffic managers that rates have been reduced. Well, people generally do not understand it that way. If you go to the manufacturer of lumber in the Southern States and tell him that his rate has been reduced, when he knows that every day he is paying \$8 more per ton than he did six years ago, you would have a very hard time to convince him that rates have been lowered. You would have a difficult time in making him see that.

You have heard a great deal, too, gentlemen, about the vast number of people who are dependent on the prosperity of the railroads. It is true a vast number of people are dependent on the prosperity of

the railroads; but we have about 90,000,000 population in our country now, and I dare say that no more than one-fifth of them are dependent either directly or indirectly on the prosperity of the railroads for their livelihood and their own prosperity. Now, is it your duty to legislate for that one-fifth or for the four-fifths? Is it not your duty to so legislate that the greatest good will come to the greatest number?

It is true that incidentally every citizen of the United States is interested in the prosperity of the railroads. It is equally true that every citizen of the United States is interested in the prosperity of the agriculturists, in the prosperity of the manufacturers, and only in that limited sense are the four-fifths interested in the prosperity of the railroads of the country.

Gentlemen, in conclusion, justice to the transportation companies demands such rates as will enable them to earn fair and proper returns on their actual investment, laid so as not to destroy natural advantages. No true American would deprive them of such rates. Let it be remembered, however, that the managers of transportation are human and are greedy, like other humans, and unless some power be interposed to change and regulate their natural greed, oppressive and discriminating and exorbitant rates are a necessity.

Gentlemen, I thank you for your attention.

Mr. BACON. Have you not misstated your figures in one respect? You said \$8 a ton, and I think you meant \$0.80 a ton in one place in your statement.

Mr. ROBINSON. Yes, sir; you are correct.

(Thereupon, at 12 o'clock, the committee went into executive session.)

STATEMENT OF S. H. COWAN, REPRESENTING THE CATTLE RAISERS' ASSOCIATION OF TEXAS AND OTHER WESTERN CATTLE ASSOCIATIONS.

To the Chairman and Members of the Interstate Commerce Committee of the House of Representatives, Fifty-eighth Congress.

GENTLEMEN: I was employed by the cattle interests to come here to Washington to place before you such facts as will be important and sustain the position of the cattle interests of the entire West—namely, that a reasonable, speedy, adequate, and inexpensive remedy be provided for the regulation of rates of freight on interstate transportation of live stock as between points in the Western States and the respective markets.

I have had several years' experience and practice in various ways with respect to the matter of rates in interstate transportation of live stock, and have represented the Texas Cattle Raisers' Association and the Cattle Growers' Interstate Executive Committee in the matter, carrying on for them a prosecution before the Interstate Commerce Commission, involving the reasonableness of advances which have been made in the southwestern rates and the terminal charge of \$2 per car on all carloads of live stock delivered at Chicago, in the course of which investigation it has been my province to ascertain something with respect to the matter of rates and the manner in which they are made, and railroad service.

Preliminary to what I shall say I pause to remark that hundreds of them could be brought here to present their claims before you did they deem it advisable or desirable. Other shippers in many instances are not as well organized, and I beg of this committee not to consider the fact that because shippers are not here to appear before it in any great number it indicates that they do not desire action on the part of Congress. They have not the means nor the facilities to come themselves or be represented by counsel. They place their confidence in their Congressmen, and they feel themselves as much unequal to the task of making an equal fight with the railroads before this committee as they do in the courts.

ADVANCES IN RATES.

It is a fact that the rates from most points in Texas have been advanced since 1898 an average of \$17.50 to \$20 per car, and they are to-day higher than they have been at any time since rates were filed with the Interstate Commerce Commission. It is also a fact that during the time these rates have been advanced the quality and value of the service has been deteriorated. It takes a longer time to reach the markets or any other destination, with a consequent material loss to the shipper, and this has occasioned general complaint. These advances have likewise applied to the Indian Territory, Oklahoma, New Mexico, Arizona, and from most points in eastern Colorado, western Nebraska, and western Kansas, parts of Wyoming and South Dakota, though the advances in the rates have not been as great from all points in such States as in the State of Texas.

I believe that it is safe to say that the rates of freight based on the present tonnage cost the live-stock shippers of the States named \$3,000,000 per annum more to-day than would the rates of freight in effect in the year 1898 and the average rates collected for the period of ten years next preceding 1898.

Not only have the live-stock rates been advanced, but in March, 1903, an advance of from 7 to 20 per cent was made on practically all class goods and commodities, with a few exceptions, from points on the Mississippi River and east thereof to the State of Texas. Space forbids a tabulation of the various rates, but you are referred to the files of tariffs with the Interstate Commerce Commission to prove the facts stated. They are not denied.

COMBINATION OF RAILWAYS.

I assert it to be a fact that it is proven by the testimony of the traffic managers of the southwestern lines that these advances were made by a combination of the carriers through their respective traffic managers or freight agents having charge of the matter of advancing rates. No such advances could have been made without an agreement or that which is equivalent to an agreement, and while the traffic agents denied that they had come to any agreement they admitted that they conferred together and all pursued the same object by the same means, each performing the very part of the transaction which all the others expected they would, and published and put into effect and maintained these advanced rates by reason of that combination. This

applies to the rates on live stock as well as to the other rates named. Lumber and grain rates have been advanced by the same method. Such reductions as have been made have been brought about by the motive of making money, and not by a disposition on the part of the carriers to make a lower rate, and on that ground they have put in lower rates in order to move traffic when otherwise it would not have moved.

In proof of the fact that the rates are higher in the Southwest than for many years, and that the same has been effected by a combination of the railroads themselves and the steamship companies carrying freight from New York to Galveston, I attach hereto, as Exhibit No. 1, the testimony of Mr. Haile, traffic manager of the Missouri, Kansas and Texas Railway Company, taken before the Interstate Commerce Commission.

INCREASE IN VOLUME OF TRAFFIC.

In the same period in which these advances in rates have been made the total tonnage as well as the passenger traffic on the southwestern lines has increased an average of 40 per cent. As an example, herewith find appended a table showing the advances of certain representative lines selected at random. An examination of the annual reports of other lines will show the same thing.

Table showing the number of tons of freight handled and the number of tons carried 1 mile per mile of road for years ending June 30, 1898 and 1904.

Road.	Total tonnage.		Increase.	Tons carried 1 mile per mile of line.	
	1898.	1904.		1898.	1904.
			Per cent.		
Texas and Pacific	2,470,765	3,681,316	40	881,447	419,978
St. Louis, Iron Mountain and Southern	4,506,071	7,719,627	69	639,542	894,368
Missouri, Kansas and Texas	3,568,825	5,204,103	46	473,691	426,431
Atchison, Topeka and Santa Fe	6,889,657	9,513,801	40	430,664	589,216
Chicago, Milwaukee and St. Paul	14,230,742	21,267,370	50	423,418	561,676
Union Pacific	4,518,923	6,645,698	41	718,881	836,727

NOTE.—Union Pacific tonnage for 1898 was greater than any year up to 1904. For example, 1899 tonnage per mile of line was 575,525.

A large amount of this increased tonnage has been from heavy articles like cement, lime, brick, castings and machinery, lumber, coal, stone, ores, and the like, all of which classes of freight take a lower rate per ton per mile than most of the agricultural products, manufactured articles, and merchandise. The result is that the rate per ton per mile may show a decrease, and yet every rate in the schedule may, in fact, have been advanced. Let no one be misled by paying any attention to the rate per ton per mile as applied to all traffic as a whole. I state it as a fact that the rate per ton per mile has advanced on live stock throughout the Southwest; that it has advanced on merchandise coming into Texas, if you apply the equation to each particular commodity, though, by reason of the extraordinary amount of low-class freight, if you average all commodities it may show a reduction, but it is entirely unimportant. The railroad which handles 1,000,000 tons of coal may handle 100,000

tons of merchandise, and an advance of 10 per cent advances the tonnage 110,000 tons, but the low-class tonnage advance is really ten times as great as the other, though the percentage of the advance is the same.

PARTICIPATING IN GENERAL PROSPERITY.

The railroads have claimed the right to participate in the general prosperity of the country. This they have done by the advance in the volume of traffic, and should not be permitted to do by simply levying a tax upon the public at their will, which they may do so long as they are in combination together. The southwestern lines, operating in the country where my clients do business, are in combination with respect to the matter of rates, and competition in rates has been eliminated. For example, in December, 1898, the same rate of freight existed precisely on every line of road which competed for the same business from the same points of origin to the same points of destination. The southwestern lines at that time advanced the rates on live stock in exactly the same manner, publishing their rates and putting them in effect on exactly the same day. The same thing was repeated in January, 1900, and again in March, 1903, and they all testify that the rates are still too low, and the obstacle to advancing them still further lies in the fact that some one of them will not consent to it. Space forbids a recital of the testimony on the subject.

UNREASONABLENESS OF RATES.

It has been asserted by the railroads at hearings that the most material matter is the relative adjustment of rates and the prevention of discrimination and preferences by rebates or otherwise. To the railroads these are by far the most material. As applied between communities of merchants situated in different cities it may be the most material question. Merchants are not so much concerned in what the rate is as in the relative adjustment of it. But when you come to consider that great body of the people, the producers and the consumers, the most material question to them is how much they shall pay. The manufacturer adds the freight to the price of his goods. The wholesaler or commission merchant adds the freight to the price at which he sells to the shipper or the retailer. The retailer advances his invoice by the amount of the freight, and at last the consumer pays it. But the great body of farmers who are producers in this country, who can not add the freight to the price of what they sell because they can not dictate the price, must always stand the freight. So, therefore, to them the most important question is that of the unreasonableness or reasonableness of the rate.

Since the railroads make a profit, as they have by the prevention of rebates and the elimination of competition, that profit can only be gained through the amount of the freight charged for transportation. It has been proven in the case of the Texas Cattle Raisers' Association against the southwestern lines, involving the reasonableness of the advances in live stock rates above mentioned, that during the period of time when the rates were adjusted upon a reasonable and satisfactory basis, previous to these advances, for years the southwestern

applies to the rates on live stock as well as to the other rates named. Lumber and grain rates have been advanced by the same method. Such reductions as have been made have been brought about by the motive of making money, and not by a disposition on the part of the carriers to make a lower rate, and on that ground they have put in lower rates in order to move traffic when otherwise it would not have moved.

In proof of the fact that the rates are higher in the Southwest than for many years, and that the same has been effected by a combination of the railroads themselves and the steamship companies carrying freight from New York to Galveston, I attach hereto, as Exhibit No. 1, the testimony of Mr. Haile, traffic manager of the Missouri, Kansas and Texas Railway Company, taken before the Interstate Commerce Commission.

INCREASE IN VOLUME OF TRAFFIC.

In the same period in which these advances in rates have been made the total tonnage as well as the passenger traffic on the southwestern lines has increased an average of 40 per cent. As an example, herewith find appended a table showing the advances of certain representative lines selected at random. An examination of the annual reports of other lines will show the same thing.

Table showing the number of tons of freight handled and the number of tons carried 1 mile per mile of road for years ending June 30, 1898 and 1904.

Road.	Total tonnage.		Increase.	Tons carried 1 mile per mile of line.	
	1898.	1904.		1898.	1904.
			<i>Per cent.</i>		
Texas and Pacific	2,470,765	3,681,318	40	881,447	419,978
St. Louis, Iron Mountain and Southern	4,596,071	7,719,627	69	699,542	884,368
Missouri, Kansas and Texas	3,568,825	5,204,103	46	473,691	426,431
Atchison, Topeka and Santa Fe	6,889,657	9,513,801	40	430,664	589,216
Chicago, Milwaukee and St. Paul	14,230,742	21,267,370	50	428,418	561,676
Union Pacific	4,518,923	6,645,698	41	718,881	886,727

NOTE.—Union Pacific tonnage for 1898 was greater than any year up to 1904. For example, 1890 tonnage per mile of line was 575,825.

A large amount of this increased tonnage has been from heavy articles like cement, lime, brick, castings and machinery, lumber, coal, stone, ores, and the like, all of which classes of freight take a lower rate per ton per mile than most of the agricultural products, manufactured articles, and merchandise. The result is that the rate per ton per mile may show a decrease, and yet every rate in the schedule may, in fact, have been advanced. Let no one be misled by paying any attention to the rate per ton per mile as applied to all traffic as a whole. I state it as a fact that the rate per ton per mile has advanced on live stock throughout the Southwest; that it has advanced on merchandise coming into Texas, if you apply the equation to each particular commodity, though, by reason of the extraordinary amount of low-class freight, if you average all commodities it may show a reduction, but it is entirely unimportant. The railroad which handles 1,000,000 tons of coal may handle 100,000

tons of merchandise, and an advance of 10 per cent advances the tonnage 110,000 tons, but the low-class tonnage advance is really ten times as great as the other, though the percentage of the advance is the same.

PARTICIPATING IN GENERAL PROSPERITY.

The railroads have claimed the right to participate in the general prosperity of the country. This they have done by the advance in the volume of traffic, and should not be permitted to do by simply levying a tax upon the public at their will, which they may do so long as they are in combination together. The southwestern lines, operating in the country where my clients do business, are in combination with respect to the matter of rates, and competition in rates has been eliminated. For example, in December, 1898, the same rate of freight existed precisely on every line of road which competed for the same business from the same points of origin to the same points of destination. The southwestern lines at that time advanced the rates on live stock in exactly the same manner, publishing their rates and putting them in effect on exactly the same day. The same thing was repeated in January, 1900, and again in March, 1903, and they all testify that the rates are still too low, and the obstacle to advancing them still further lies in the fact that some one of them will not consent to it. Space forbids a recital of the testimony on the subject.

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lines customarily paid rebates to get the business. It was deemed sufficiently profitable in that competition with each other to purchase it. Who got the benefit of that? Undoubtedly the shippers. Who received the benefit by the stopping of rebates? Undoubtedly the railroads. Is it any wonder, then, that they, with one accord, desired to prevent rebates?

With rebates eliminated and with published rates maintained as they are, and should be, competition is, as it must be, eliminated, whatever the theory of the law was with respect thereto. The factors which the Supreme Court of the United States held to be those on which the reasonableness of a rate must be determined and which must be considered by the Commission or any other tribunal deciding the fact of reasonableness are:

First. "That the circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies and of producers and shippers and of consumers should be considered by the tribunal appointed to carry into effect and enforce the provisions of the act." (*T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197.) And in the *Nebraska* rate case the Supreme Court said:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation must be the fair value of the property being used by it for the convenience of the public, and in order to ascertain that value the amount and market value of its stocks and bonds, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

And again:

It can not, therefore, be admitted that a railroad corporation, maintaining a highway under authority of the State, may fix its rates with a view solely to its own interest and ignore the rights of the public; but the rights of the public would be ignored if the rates for the transportation of persons or property used for the public or the fair value of services rendered, but in order simply that the corporation may meet operating expenses, pay interest on its obligations, and declare a dividend to stockholders.

If a railroad corporation had bonded its property to an amount which far exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds, and obligations, is not alone to be considered when determining the rates that may reasonably be charged.

And in the case first cited the Supreme Court has firmly established it that the question of reasonableness is one of fact. In the nature of things it could not be otherwise. Hence, the province of the court should not extend to any question of reasonableness, as that would destroy the act.

RAILROAD COMPANIES DO NOT UNDERTAKE TO MAKE REASONABLE RATES.

I state it as a fact, demonstrable by the evidence of every traffic officer who has been examined by the Interstate Commerce Commission, that there is no basis for rate making. No better proof could

be made than is found in the files of the tariffs showing the actual rates which have been in existence on various lines of railroad, as they have fluctuated up and down, which fluctuations and comparisons of rates on various lines on various commodities conclusively prove the want of any standard.

I therefore assert that railroads have no basis, theory, or practice to fix reasonable rates; they accept what they must and take all they can consistently with the effort of making the most money in the long run.

As proof of this fact I attach hereto, as Exhibit No. 2, the testimony of traffic officials of several of the southwestern lines, whose names will be found in connection with the exhibit.

COST OF SERVICE UNKNOWN QUANTITY.

Undoubtedly one of the most material elements with respect to the reasonableness of rates charged for railway transportation is the cost of performing the service. Anyone is entitled to ask the railroad company to perform the service, but no one is entitled to ask it to perform the service without profit. But if the railroad company performing the service can not tell you what it costs to perform the service, upon what ground can it be contended that it has a superior knowledge in determining what the charge should be? I assert it to be a fact that when questioned upon that subject all of the traffic men of the country admit, as Mr. Bird, vice-president of the Gould lines admitted before this committee, that they can not tell the cost of the service of transporting a given commodity or a given train-load of commodities between any two points. In proof of this fact I refer you to Exhibit No. 2, wherein you will observe that the traffic representatives of the various southwestern lines have frankly so testified.

Furthermore, it is fully shown in their testimony that none of them consider any of the elements which the Supreme Court has stated constitute the standard of reasonableness.

The inquiry naturally would be, How is the question of reasonableness to be determined by anybody, whether a Commissioner or a traffic man? The answer is that the present rate adjustment of the country, or up to the time when the companies entered into combinations among themselves to fix rates by agreement or conference, that it is a matter of evolution. Every imaginable circumstance surrounding the building and the operation of railroads, the construction and putting into operation of new lines, competition between each other, between markets, the economies in transporting freight, the volume of traffic, the return movement of empty cars, the direction of the volume of traffic, the net result upon the whole is shown by experience, have all had a marked influence. Imagination can not conceive of the innumerable facts and things that have brought about what is. Therefore, it is by comparison that we are enabled to know to-day what is a reasonable rate, and this proposition will not be disputed. If so, I would refer you to an abundance of testimony of railway men on that subject. For example, Mr. James Hagerman, of St. Louis, general counsel for the Missouri, Kansas and Texas Railway Company, in a brief filed before the Interstate Commerce Commission in cause 677, involving the class and commodity rates from St. Louis to

Texas common points, after reviewing the authorities, makes the following statement with respect to the standard of reasonableness of rates:

Therefore, when rates are shown to be those resulting from the force of competition and not in excess of the rates charged for the same service by other carriers similarly situated, the rates are not only *prima facie* reasonable, but are conclusively reasonable, as no other standard is or can be used for determining that question.

This is fully borne out by the expression of the Supreme Court in the case of *U. S. v. Trans-Missouri Freight Association* (166 U. S., 332), where the Supreme Court has said with respect to the question of reasonableness:

What is the proper standard by which to judge the fact of reasonable rates? Must the rate be so high as to enable the return of the whole business done to amount to a sum sufficient to allow the shareholder a fair and reasonable profit? If so, what is a fair and reasonable profit? That depends sometimes upon the risk incurred, and the rate itself differs in different localities. Which is the one to which reference is to be made as a standard? Or is the reasonableness of the profit to be limited to a fair return upon the capital that would have been sufficient to build and equip the road, if honestly expended? Or is still another standard to be created, and the reasonableness of the charge tried by the cost of the carriage of the article and a reasonable profit allowed on that? And in such case would contribution to the sinking fund to make repairs upon the roadbed and renewal of cars, etc., be assumed as a proper item? Or is the reasonableness of the charge to be tested by the reasonableness of the charges for the transportation of the same kind of property by other roads similarly situated? If the latter, a combination between the roads would, of course, furnish no means for answering the question. It is quite apparent, therefore, that it is exceedingly difficult to formulate even the terms of the rule itself, which should govern in the matter of determining what would be reasonable rates for transportation. While even after the standard should be determined there is such an infinite variety of facts entering into the question of what is a reasonable rate, no matter what standard is adopted, that any individual shipper would in most cases be apt to abandon the effort to show the unreasonable character of a charge sooner than hazard the great expense in time and money necessary to prove the fact, and at the same time incur the ill will of the road itself in all his future dealings with it. To say, therefore that the act excludes agreements which are not unreasonable restraint of trade and which tend simply to keep up reasonable rates for transportation is substantially to leave the question of reasonableness to the companies themselves.

It is perfectly idle to talk about rates being reasonable or unreasonable *per se*. There is no such thing, because it must always be relative—because it must be determined by comparison.

I ask you, therefore, what factor or element in the equation of determining what is a reasonable rate may not as well be ascertained by a competent commission on investigation as by a traffic man himself. The Commission is an impartial tribunal; the traffic man is making rates to make money.

ADVANCES IN THE COST OF SUPPLIES, MATERIAL, AND LABOR OFFSET BY INCREASED TONNAGE.

It is stated that advances in rates are not unreasonable because they are justified by the increased cost of operation due to increase in the price of labor, supplies, and material, to which I reply that such advance in these prices has more than been offset by the increased volume of traffic and by the economies introduced in handling it.

As the country settles, as towns, cities, and villages grow up, as the population increases, as the volume of commerce increases to the

consequent increase in tonnage of railroad freight and increase in passenger travel, shall the result be that, notwithstanding these facts, the tax which the public-service corporations levy against those over whom they have the power of monopoly become greater? With more railroads and better facilities for transportation shall the prices of it increase to the public? If so, then every additional railroad that is built in every community, which divides the tonnage and reduces the earnings of the existing lines, furnishes a basis for increased rates.

In order to furnish this committee with the data necessary to prove the facts I state I file herewith, as Exhibit No. 3, a copy of a brief which I prepared and filed before the Interstate Commerce Commission in an investigation respecting the advances in the class and commodity rates from St. Louis to Texas common points, in which will be found, under proper headings, tables, figures, memoranda, and remarks with respect to testimony of witnesses, and which are to be found in the record of that case, and which will show:

First. That the total cost of labor in proportion to the gross earnings is not greater than it was in 1892 or 1894.

Second. That the increase in the price of labor was more than offset by what the labor earned in the service.

Third. That a dollar expended for labor in 1903 was more valuable and produced greater results in transportation than in 1892.

Fourth. That beginning with January, 1900, there was a gradual increase in prices of supplies until July, 1903, and since that time there has been a substantial decrease, so that the prices of supplies and materials are not substantially different to what they were in 1892.

Fifth. The tons of freight carried 1 mile per ton of fuel is materially increased.

Sixth. That the financial condition, expenditures, operating expenses, and net earnings on the southwestern lines is fully set forth in tables from which it is shown that net earnings have been increasing for twelve years and that based upon the real value of these railways they have earned a fair per cent on the cost of the property at all times and in recent years a very large per cent, more than can be earned in other large investments in real property.

Seventh. The economies in handling traffic are shown in which it appears that there has been a great increase in the number of tons carried 1 mile per mile of road, the number of tons per train mile and per loaded-car mile, and generally a decrease in the percentage of empty-car mileage, with a large increase in passenger traffic and earnings.

RAILWAY AND PUBLIC INTERESTS NOT IDENTICAL.

The oft-repeated and catchy expression that the railway interest and that of the public is identical is in no sense true with respect to the question of reasonable rates. Their respective interests are adverse and the identity of interests must always disappear when the one makes its charges against the other. That both are indirectly interested in the prosperity of the other goes without saying, but that unity of interest ceases the moment the one is to be made more or less prosperous by taking or requiring from the other more than is just

for a quasi public service. Thus it is that there must be always a conflict of interest upon the question of the amount a railway may charge, and this fact presents the supreme necessity of a tribunal which may, at least in all cases of disagreement, determine what is fair and just under all the circumstances. The railroads, being opposed to giving up their prerogative to themselves fixed the amount, are naturally in a position of antagonism to any adequate limitation of that privilege; and it will happen, as it must, that unless the voice of the people's representatives rather than that of the railroads is reflected in the provisions of any measure which provides the remedy, such remedy will prove fatally defective.

THE REMEDY.

I am surprised to hear gentlemen of well-known ability argue before this committee that the fact that there has been no judgment of the courts sustaining any decision of the Interstate Commerce Commission against the reasonableness of a rate is proof that rates are reasonable, and that no finding of the Commission to the contrary has been sustained. Until they shall point out some case in which the courts have overruled a decision of the Commission against a rate as being unreasonable there is no merit to the argument. The fact is that the Supreme Court has in no case held that the Commission's findings on the facts were wrong. It would more comport with a sense of justice for this committee to examine the decisions of the courts with respect to the points on which the Commission's decisions have been based than to accept the suggestion that it had missed the bull's-eye and like remarks. For your convenience I attach a synopsis, marked "Exhibit No. 4."

As stated by the Supreme Court in *T. and P. Ry. Co. v. I. C. C.*, that it has been the law for more than a hundred years that all unjust and unreasonable rates charged by a common carrier are unlawful, and it has been settled that one suing at common law may recover for any unreasonable or unjust or discriminatory charge (see *Call v. Western Union Telegraph Company*, — U. S., —); it is remarkable how few cases there have been of recovery of this character. The difficulty expressed by the Supreme Court in the *Joint Traffic* case of proving the unreasonableness of a rate undoubtedly is amply sufficient to insure railroads against many such suits, however exorbitant their rates may be. Therefore we must look to the remedy which fixes the rate in advance.

It needs no argument to show that it is quite within the exclusive power as it is the duty of Congress to appropriately regulate interstate commerce so as to produce justice and equality; and since the arteries of that commerce are the railroads, to regulate both the rates which they may charge and the service which they should render. I shall waste no time to convince those who are of contrary mind of the imperative necessity that this be done.

Probably not less than 65 per cent of all traffic on railroads is interstate, and a still larger proportion of the freight charges and passenger fares collected which make up the \$2,000,000,000 of railway earnings of this country which annually come from interstate traffic. The people being bound to pay it, shall the railroads charge what they may?

If it might be disastrous to the railroads for the shipper to fix the rates, may it not be so to the public if the railroads may without restrictions fix the charges? You must understand exactly the old law before amending it.

SYNOPSIS OF THE ACT TO REGULATE COMMERCE BY SECTIONS.

First. After making all railroads engaged in interstate traffic under a common arrangement for continuous carriage, subject to the act, it declares that all charges shall be just and reasonable and prohibits all unjust and unreasonable charges, and this is its most important provision, though the power to enforce it is quite imperfect.

Second. It prohibits discrimination between persons in the matter of charges for similar identical service.

Third. It prohibits undue and unreasonable preferences or advantages between persons, traffic, and localities.

Fourth. It prohibits charging more for longer than for shorter hauls under similar circumstances, over the same line in the same direction, except as may be allowed by the Commission.

Fifth. It prohibits pooling of earnings, and by its whole tenor intends to leave competition free and unrestricted.

Sixth. It requires all interstate rates to be published, filed with the Commission, and posted in their depots in manner provided by the Commission, and prohibits deviation from such rates till changed—in case of advance, on ten days' notice; or of reduction, three days' notice.

Seventh. It prohibits carriers from making local shipments out of through shipments, and intends to bring all interstate movements on through rates under the terms of the act.

Eighth. It declares the carriers liable for damages and attorney's fees for every injury caused by any violation of the act, and purports to furnish a remedy therefor.

Ninth. The injured party may proceed in a civil action for redress for such injury either before the United States circuit court in the first instance or before the Commission, and upon an order of reparation by it which is not obeyed, then to proceed in court to enforce such order.

Tenth. Every officer or agent of the carrier willfully violating the act or any provision thereof is deemed guilty of a criminal offense and subject to punishment by fine or imprisonment. So, likewise, is the shipper aiding or abetting in the unlawful transaction.

Eleventh. For the purpose of enforcing the provisions of the act the Interstate Commerce Commission is established, of five members, not over three of whom shall be appointed from the same political party.

Twelfth. It prescribes the Commission's duties, as follows:

That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act.

Also to prosecute through the Department of Justice all necessary proceedings to enforce the provisions of the act and to compel the production of witnesses and documentary evidence, but it is not given the power to fix any rate for the future.

Thirteenth. It gives the right to all persons, firms, corporations, associations, and boards and municipalities to make complaint to the Commission by petition of any violation of the act, which it is made the duty of the Commission, if the grounds appear reasonable, to investigate in such manner and by such means as it shall deem proper; and in like manner to investigate any complaint forwarded to it by any State railroad commission; and upon its own motion to institute any inquiry in the same manner and to the same effect as upon complaint, and no complaint may be dismissed for want of direct interest of the complainant.

Fourteenth. Whenever an investigation is made by the Commission, it is its duty to make a report in writing with respect thereto, and its findings of fact upon which its conclusions may be based, together with its recommendation as to what reparation should be made by the carrier to the injured party; such findings are in all judicial proceedings *prima facie* evidence of the facts found.

Fifteenth. If it appears to the Commission upon any investigation that the act has been violated and anyone injured thereby, whether complainant or other person, it shall serve a copy of its report upon the carrier with notice to cease and desist such violation, or make reparation for the injury done, or both.

Sixteenth. If the carrier does not obey such order to cease or desist, the Commission or anyone interested may apply to the United States circuit court for the proper district in a summary manner for a mandatory injunction to enforce such order without the formalities of equity proceedings; such court may take such evidence as it may deem necessary, but must treat the Commission's findings as *prima facie* correct, rendering a just judgment in the premises, being fully empowered to speedily enforce the Commission's orders. An appeal is allowed to the Supreme Court, but the circuit court's decrees is not suspended during such appeal. The expenses of such prosecution by the Commission is paid by the Government, and the court shall allow complainant attorney's fees in case the Commission's order be sustained.

Also, any injured party may file suit at law summarily in the United States circuit court to recover the reparation found to be due by the Commission and have a speedy hearing. In such case the Commission's findings are *prima facie* evidence of facts found. If successful, the complainant shall be allowed all costs and reasonable attorney's fees.

Seventeenth. The Commission shall conduct its business so as to secure the ends of justice, and adopt such rules as may conduce to that end.

Eighteenth. The Commission's salaries and expenses are provided for, and it is authorized to employ and fix compensation of its office force and other employees.

Nineteenth. The Commission's office is fixed at Washington, where its general sessions are held, but when necessary or more convenient sessions may be held elsewhere, and one or more of the Commissioners

may prosecute inquiries and take evidence in any part of the United States respecting any matter pertaining to the business of any carrier subject to the act.

Twentieth. It is provided that the Commission shall require the carriers to make annual reports to it, showing almost every conceivable item of the carrier's affairs in every department of its business.

Twenty-first. It is the Commission's duty to make its report annually before December 1 to Congress, containing all such data and information as may be valuable in determining questions relating to the regulation of interstate commerce, with such recommendations as to additional legislation as may be deemed necessary to perfect the act. The Commission has performed its duty in this particular, but Congress up to this time has not.

Twenty-second. Certain exceptions from the operation of the act are made respecting reduced rates or free service for the Government, States, municipalities, and objects of charity and charitable institutions, and officers and employees of railways. Also provisions for interchangeable reduced-mileage tickets, etc.

The remedies of the act are also declared to be in addition to common-law remedies, and such remedies, or those provided by the common law or by statute, are not affected by the act.

Twenty-third. The circuit courts of the United States are authorized to issue writs of mandamus compelling such carriers to furnish cars and facilities and to move freight upon same rates, terms, and conditions for one person as another.

Twenty-fourth. Full power to compel witnesses to testify, notwithstanding the testimony may incriminate him, is conferred by the amendatory act of 1893.

Twenty-fifth. The scope of the act respecting rebates was enlarged by the Elkins Act of 1903, so that every form of deviation from the published tariffs is prohibited under penalties of fines, the imprisonment feature of the former law having been eliminated; also additional powers given to the Commission to compel by judicial procedure the enforcement of published rates and to prevent discrimination in violation of the act.

It also makes applicable to suits by the Commission a certain enactment to expedite hearings in such cases before the United States circuit courts, providing for appeals direct to the Supreme Court of the United States instead of through the circuit courts of appeal. Since its passage the matter of direct rebates has largely ceased, though by various indirect means the railroads, to some extent, still practice it.

Except as to the safety appliances act, the foregoing presents a synopsis substantially of the principal provisions of the act to regulate commerce as it exists to-day, as applied to railroads. There can be little doubt that it was intended by its framers to be sufficiently comprehensive not only to prohibit all of the principal wrongs then known, but to furnish an adequate and speedy remedy therefor. But it was a new and untried comprehensive measure, and it was to be expected that defects would be found in the law, and that new conditions would arise to which it would not apply, and, therefore, that it must be amended to meet such exigencies from time to time.

THE ACT TO REGULATE COMMERCE HAS BEEN OF GREAT VALUE.

That it has been of inestimable value no one familiar with the facts can doubt. The accumulated information contained in annual reports of railways and the records and statistical data covering, as they do, sixteen years of the marvelous railway development of the country in construction, consolidation, and operation of railways, as well as their financial operations, comprises a history which otherwise it would be practically impossible to obtain. Its value, therefore, can not be overestimated, because we would be groping in the dark in any attempt at railway regulation without it. It has been, therefore, equally valuable to the railways themselves and to the public. The same may be said of the tariffs on file with the Commission for the same period, comprising a history of rates otherwise unobtainable.

In addition to this, volumes of testimony and findings of the Commission in the many important hearings which it has held, in which opinions have been rendered, often by very able men, furnish an encyclopedia of learning upon the subject to which anyone may resort who desires to become educated upon the subject, but for which we, the public, would be like a schoolboy starting in the primer, so far as this subject is concerned.

And, again, the questions which have arisen in the courts, fought out by lawyers of great ability and decided by judges and courts eminent for probity and learning, have blazed the way and placed by the roadside landmarks of inestimable value to guide both the public and the railroads when confronted, as we are, with the question of appropriate railway regulation, which our worthy President emphatically declares to be the most important question before the American people.

So, therefore, to him who says that the act to regulate commerce has been a failure or a worthless enactment let it be said he has not fairly measured it.

It is no uncommon thing to read in the papers and to hear from the platform declarations that the law as it stands is worthless, but what has been said shows that such statements are incorrect. That the law has been discovered to be seriously defective is undoubtedly true, yet it affords some remedy, though very imperfect, and is being constantly resorted to as the only means of railway regulation. Many of the Commission's decisions are complied with, and the fact that it may be resorted to with a fair show of success, after protracted litigation, has no doubt some beneficial restraining effect. On the whole it may fairly be said to have been of very great benefit to the public.

PRESENT LAW SHOULD BE RETAINED, BUT PERFECTED.

You will observe from the foregoing analysis of the act that the machinery of the law seems complete. In fact, its provisions have been put into working order, and a system of operation thereunder has become established. The country has become familiar with it and the proceedings under it. The decisions under it may be used as precedents and the machinery kept in working order without the dangers which would surely follow a new system. Therefore, considering the comprehensive character of the act, its many wise and

salutary provisions, it certainly seems to me that when we approach the all important and complex problem of railway regulation we should profit by experience, holding fast to that which is good, discarding that which is bad, and render perfect that which is imperfect. My object, therefore, is to point out these features and to show, if I can, what ought to be done as well as the danger which may follow the enactment of a new and untried complex system, thereby possibly destroying what we have and leave us with a law more imperfect.

THE IMPERFECTION OF THE PRESENT LAW.

The fourth section, commonly known as the "long and short haul clause," it was supposed, was intended to prevent discrimination between localities and persons in transporting over the same line in the same direction at a less rate for the longer than shorter haul. The qualifying words, "under substantially similar circumstances and conditions," it was supposed, and the Commission so held, would apply in case of water competition, but not competition by railroads with each other. But the Supreme Court held otherwise, and now the act as construed means that if there is competition at the farther distanced point with other railroads, the section does not apply, because in such case the carriage would not be under substantially similar circumstances and conditions.

The undue-preference clause of the third section has fallen by the same criticism wherever the preference arises from the same cause; and it has been expressly held that the qualifying words of the fourth section, just quoted, gives the right to the carriers to make such discrimination or preference in cases of dissimilarity existing alone from railroad competition. So from practical effect, so far as I can see, sections 3 and 4 might as well be repealed in so far as they apply as bases of rate making to commercial centers or railroad crossings. Under the interpretation of the act by the Supreme Court, which all must admit to be correct whether we think so or not, it is for the court to say what are similar and what are not substantially similar circumstances and conditions, so that you can never know in advance what it will consider dissimilar—the term is so comprehensive. You can see from this how disastrous to this feature of the law it was for its framers to have used such inapt yet comprehensive and flexible terms as "under substantially similar circumstances and conditions." This illustrates how the whole purpose of an enactment may be defeated by nullifying exceptions and qualifications.

These defects can be cured by simply striking out the qualifying words and leaving it to the Commission to determine the circumstances and conditions which will make it reasonable that a greater charge for the short haul than the longer haul be allowed. If anyone suffers from such amendment it will arise from the just application of a beneficent rule. This section should either be thus amended or repealed.

REASONABLENESS OF RATES AND HOW TO DETERMINE.

The Commission may not designate what the proper rate is to be substituted for one found to be unlawful, because the act does not

distinctly so provide; neither is it within the power of any court or tribunal to do so, because the rate-making power can not be delegated to the judiciary.

It needs no argument to show that the law, being in this state, is very imperfect; while it prohibits unjust, unreasonable, and discriminatory rates, the machinery provided for its enforcement has proven inadequate. Every provision for its enforcement seems on its face to be complete, even to minute detail. The Commission is apparently clothed with full power to enforce its provisions, but this appearance became a mere shadow when it was found to be defective in that it did not specifically empower the Commission to name the rate to be substituted for the unlawful one. This emasculated the law as it was previously supposed to exist.

It is this imperfection which leaves the public with no adequate or speedy remedy to obtain redress in cases of unreasonable rates. It is this imperfection which has caused the entire shipping interest of the country, except the favored ones, to demand the amendments of the act and largely induced the President to strongly recommend it. Through repeated decisions of the courts and Commission, we have become familiar with the very point wherein lies the trouble. Why not remove the trouble—eliminate the imperfection exactly at the point where we know it exists? If that is done, the Commission, instead of making a recommendation merely, can say to the carrier "We have upon full hearing ascertained that a certain rate is too high, and that a certain rate would be a proper one; it is our opinion that it will afford you fair compensation; you shall henceforth charge that rate unless conditions so change as to entitle you to charge more." Need anyone fear that the Commission will make the rate too low? I do not believe anyone is justified in any such assumption. I believe there has been no case in which the courts have said so, but wherever the Commission's orders have been set aside it has been upon the ground of some defect in the law or in the procedure, and mainly because of want of power.

All commissions and courts must be imperfect and err in judgment, and if we wait for absolute perfection and just judgments in all cases before we have a remedy, then all law and all remedies must fail.

NO DANGER OF COMMISSION MAKING RATES UNPROFITABLE TO RAILROADS.

The oversolicitous railroad representative conjures up in his mind a scheme of confiscation by the Commission being granted the power to name a proper rate to be substituted for an unlawful one, and with elongated countenance deplores the prospect and thinks he faces ruin. Such is a mere figment of the imagination. The railway henchmen can always see ghosts of destruction in railway regulation, but the destruction has not happened. It is only a ghost. Is it more in accordance with justice that the railroads be permitted to continue charging a rate held by an impartial tribunal to be unjust and unreasonable or discriminatory and have the shipper stand the loss than to require observance and let the railroad stand the loss of its unjust exactions? The proposition is that when the Commission decides that the rate is just the shipper must pay it, and when the Commission decides that the rate is unjust the shipper must continue to pay it

until some court decides that the Commission's decision is right. And all of this because of an unholy fear that the Commission will rob the railroad. In other words, the railroad must be permitted to rob the public in order to prevent the Commission robbing the railroad. In the former case there is the motive of gain; in the latter, no motive except justice.

**PROPOSITION THAT RAILROAD WILL REIMBURSE THE INJURED PARTY
UNSOUND.**

The proposition that the railroad can and will reimburse the shipper upon the Commission's decision being found correct, while if the Commission's decision is found to be incorrect the railroad can not be reimbursed, and therefore that the Commission's order should not become effective till final determination by the courts, presupposes, first, that reparation can be made to the really injured person, and, second, that by the Commission's order reducing a rate will operate as a loss to the carrier. Neither of these suppositions are maintainable; in fact, are impossible. The matter must be considered from the standpoint of a given case, from which a rule for the many may be deduced. Take, for example, the advance in freight rates on all class goods and most commodities from St. Louis to Texas common points, of an average of, say, 10 per cent, made in March, 1903. The Commission made an investigation into that advance, but has not yet decided it. Now, suppose it holds the advance unreasonable, who will be entitled to reparation? You will at once say, "The person who paid the freight;" and the inquiry then is, Who paid it? Take a carload of furniture, or agricultural implements, or sugar, for example. The jobber, wholesaler, or commission merchant adds the freight in the price to retailer, and the retailer to his customer; so it results that the consumer pays it. Can the wholesaler justly claim reparation? He was not injured. Can the consumer do so? He did not pay anything direct to the railroad, nor can he afford to foot will the small amount which was added because of the advance. Can the merchant whose business has been crippled thereby recover it?

Thus it seems impossible to make restitution to whom it belongs. Let it be admitted that as applied to some traffic it may be done, yet in 75 per cent of the cases it can not be done. It may sound pretty to give a bond to pay back the unlawful rate, but it amounts to little when the real injured party can't be found, or, if he should be found, has an interest too small to consider. The law now provides for reparation and is entirely as efficient as any proposed bond to make reparation, so the bond would be mere surplusage.

As to the Commission's order resulting in loss to the carrier, it by no means follows that a reduction in a rate will produce less earnings; that depends on whether the movement of the traffic is stimulated over the given line. Railroads have frequently reduced rates for the purpose of making more out of the business. It is well known that a high rate may earn less than a low one on a given line of railway on a particular traffic. Justice is always a matter of approximation, and the rule of the greatest good to the greatest number must prevail.

Any attempt, therefore, to so frame a law as to permit a railroad to continue an unlawful charge on the condition of making repara-

tion to the injured party is a mere delusion, and must result in the railroads retaining the principal part of the unlawful booty. There is never any danger of the Commission requiring that traffic be carried at a loss, but if it does so it will be enjoined.

THE GOVERNMENT SHOULD PROSECUTE THE INQUIRY AND NOT REQUIRE OF THE SHIPPER THE UNEQUAL TASK OF LITIGATION.

If a given shipper is dissatisfied with a rate of freight or any advance in it, he will not generally enter into litigation with half a dozen railroads, because the contest is entirely unequal. He can not afford the expense; he can not get the witnesses; he can not take the time which would be necessary, and hence any remedy which does not provide for the Government to take up the contest will be of little practical benefit. Let me illustrate: The Cattle Raisers' Association of Texas being dissatisfied with certain advances in rates on live stock in Texas to market and elsewhere, in February, 1904, instituted a proceeding before the Interstate Commerce Commission attacking the reasonableness of these advances. The first hearing was held at Fort Worth in April, 1904, and occupied several days in taking testimony of witnesses brought from various distant points at large expense to the association. The next hearing was held at St. Louis in June, 1904, and there the railroads introduced testimony for almost a week. In the meantime the cattle growers' interstate executive committee brought to the attention of the Interstate Commerce Commission the claim of shippers in other parts of the West that the rates were unreasonably high and the service bad.

The Commission, on its own motion, ordered an investigation. That inquiry, together with the Cattle Raisers' Association case, with which it had been consolidated, was set down for hearing at Denver in September, and occupied several days in the examination of witnesses brought largely from a distance. The next hearing was held at Chicago, occupying a week. The next hearing was held at Fort Worth, where the evidence was practically concluded in December, 1904, at which the Cattle Raisers' Association examined witnesses brought from a great distance at large expense. The case now made by the testimony, if all of it were written out, including the exhibits and documents as well as the testimony of the witnesses, would embrace more than 20,000 pages of typewritten matter. The case is yet to be briefed and argued before the Commission. Now, suppose the Commission should decide the case in favor of the cattle raisers' contentions? If the railroads do not voluntarily obey the Commission's order, either the Commission must proceed or the Cattle Raisers' Association must proceed by a bill in equity to enforce the Commission's decision; otherwise there is no penalty for disobedience. If this great volume of testimony is placed before the court for consideration and the court should decide adversely to the Commission, on any appeal therefrom the record must be printed. With the regular charge allowed to clerks for having the record printed, that one item will cost \$15,000. Of course, if the case should be brought by the Commission the Government would pay the expense, but if the Commission did not see fit to bring it the shipper would be practically deprived of his remedy on any appeal, because of the expense of printing the record. True, the Commission has

usually paid that character of expense, but under the present law it is not bound to proceed, and therefore the option to the shipper to do so is, from a practical standpoint, a worthless one.

Furthermore, in any proceedings involving rates on any given commodity or any schedule of rates the general public in the vicinity where the rates apply is affected to the same degree as the shipper, and it is therefore a matter of public concern and not merely a matter which concerns a particular shipper.

Hence I say that all the law should require is a specific complaint which the shipper makes, and if upon investigation it appears proper to do so, the Commission should institute an investigation and the Government bear the expense of it, and any remedy that falls short of that will not be adequate. The machinery of the law already provides for this, except that the case proceeds before the Commission upon complaint at the expense of the shipper, except in cases where, on its own motion, the Commission institutes an inquiry.

THE COMMISSION SHOULD DETERMINE THE FACTS AND ITS ORDER SUBJECT TO BE SET ASIDE FOR UNLAWFULNESS ONLY.

It has been repeatedly decided by the courts that fixing a rate for the future is a legislative act, whether done by the legislature or by a Commission authorized to do so, and that the power to fix a rate for the future can not be delegated to the judicial branch of the Government. The court can only determine whether the Commission has violated the law in the manner of performing its functions or violated constitutional rights in fixing such rates. If it has, its orders may be enjoined, and for this purpose the power is inherent in the courts to act, without any special authority. It has been repeatedly so held in injunction cases against rates fixed by State commissions. Precisely the same principle is involved in actions for injunction against the Interstate Commerce Commission if it is given the power to fix a rate for the future. Hence, to the over-solicitous railway representative let it be said the railroad is in no danger of having to do business at a loss by any act of the Commission.

Furthermore, the establishing of a court to supervise the acts of the Commission ought not to extend to matters of fact, but only to questions of the lawfulness of the Commission's orders. This is so because the determination of questions of the reasonableness or rates, or whether they are unduly discriminatory, and the like are questions of fact, and the experience of a Commission enables it better to determine the same correctly. It can not be compared to any other sort of case. The evidence to show a rate to be unreasonable is without limit, largely opinions, and in all cases the determination of the question is one of opinion—of judgment and not of law. The factors which the Supreme Court of the United States holds as most material are, the cost of the property, the cost of improvements, amount and value of securities, cost of replacing, probable earning capacity, cost of operation, excluding all fictitious indebtedness or watered bonds and stocks. But it holds that none of these are controlling, and at last the most certain test of what is a reasonable rate is such rates as is established by free competition, and therefore the policy of the law is to preserve competition and prevent combinations which destroy it.

Now, if you take any case which arises at this time, when competition has been largely eliminated, how is it possible to arrive at any conclusion as to what is a fair rate, except the enlightened judgment of an experienced and fair tribunal like the Interstate Commerce Commission, having on file all previous rates and statistics pertaining to the operation, earnings, expenditures, and finances of each road? For what good reason should any court review its decisions except to determine mere questions of their lawfulness and to preserve constitutional rights? The Supreme Court of the United States has repeatedly said that the Commission is more competent to pass upon the facts than the courts. This is manifestly so, because each investigation enhances its knowledge, and familiarity with the subject enables it to analyze and classify the facts, rejecting the errors, and to base its findings upon the reliable evidence aided by its own accumulated knowledge. As an example of this, in a case respecting dead freight, railway representatives testify that heavy train loading and heavy equipment has not proven an economy in operation. That was where the contention was made that because of these factors rates should not have been advanced. In another case, where the same roads are defendants, they proved that because of lighter train loading of live stock than other freight the advances in rates were justified. This shiftiness would enable the roads to hoodwink two different courts, but not so the Commission, which is entitled to use its enlightened judgment. Such examples might be multiplied indefinitely. In my opinion, there is no argument against leaving to the Commission every power which it now has and extending the same so that it may adequately and speedily enforce the provisions of the act without unnecessary interference from the courts. Mark it that those who oppose these simple amendments are not looking for railway regulation for the public good.

INTERSTATE COMMERCE COURT SHOULD NOT BE EMPOWERED TO SUBSTITUTE ITS JUDGMENT UPON THE FACTS FOR THAT OF THE COMMISSION.

The proposition, which has been made in various forms, to establish an interstate-commerce court should be very carefully scrutinized and its jurisdiction should not extend to the determination of the matters of fact, except in so far as the same might be necessary in ascertaining whether the Commission's decision was in violation of some law or constitutional rights. In other words, its judgment upon the facts should not be substituted for that of the Commission. It should be made to work in harmony and not in opposition to the Interstate Commerce Commission. It should be constituted in fact a court to protect the rights rather than to act as a trier of facts. Its object should be to speed, rather than to impede, the prompt enforcement of the Commission's order. There should be only one such court, so that on all questions it may act speedily as a unit, and its judgment should be final except on constitutional questions. Its power to review any action of the Commission should be confined to ascertainment of whether or not the Commission's order is in violation of law or constitutional right, and it should not be permitted to suspend such order pending the court's decision except where it is manifestly unlawful.

The procedure before it should require a prompt submission of the findings of the Commission and the original testimony, without the enormous expense of printing or copying, to such court on any application to suspend the Commission's order, and that it decide the matter of such application promptly upon that record. In all such matters a speedy determination is the most important element, and while the impossibility of a judicial procedure through the regular channels of our courts affording sufficient promptness may, and doubtless does, justify the establishing of such a court, yet the validity of any procedure before the Commission or the validity of its findings and decisions should not be made to depend upon the constitutionality of any law establishing such court or defining its powers, that is to say, if Congress makes a mistake in the one law it should not affect the other. We have all along supposed that it is not within the constitutional right of Congress to vest in the judiciary rate-making powers, directly or on appeal, though it may confer such power upon a commission. In view of which it will be readily observed that in the event of such power being conferred upon the Commission no appeal could lie to any court for a review of the Commission's determination of a rate for the future for want of constitutional power of the court to exercise the legislative function of rate making. We want the interstate-commerce act so amended that the Commission, after hearing on complaint, may name a proper rate to take the place of an unlawful one, and we don't want that power destroyed because of the invalidity of some law providing for review by some court.

Furthermore, it would seem foolish to have a court review the Commission's findings of fact and determination of what should be a proper rate; the findings of some one must determine it, and suppose the court has the power of review and should arrive at a different conclusion to the Commission: upon what ground could it be said that the court is any nearer right than the Commission? Why substitute the court's judgment for that of the Commission on the facts or questions of a proper rate, when a Commission is the more competent to decide it, as the courts have repeatedly admitted?

The only excuse for an interstate-commerce court is to provide an appropriate and speedy opportunity to have passed upon the questions pertaining to the lawfulness of the Commission's decision and protection of constitutional property rights; if it goes beyond that it will be a snare and a pitfall.

The courts as they exist now can afford to parties complaining of the Commission's decision respecting a future rate as proposed adequate protection. Certainly until the new part of the proposition—that is, the establishing of a special court—can be deliberately planned and carried out. There is no haste necessary, so let that part of it rest till you ascertain how much it is needed. How foolish it would be to establish a new court in a hasty and imperfect way.

THE PROPOSITION TO ALLOW POOLING UNNECESSARY; BESIDES, IT WOULD BE DESTRUCTIVE OF COMPETITION AND GOOD PUBLIC SERVICE.

The present law prohibits pooling; that is, it prohibits two or more lines of railroad leading from one commercial center to another from agreeing that they will divide their earnings or traffic. That provi-

sion of the law was no doubt inserted so as to preserve competition, both in respect to the matter of rates and quality and character of service. It looks to me that it will be a step backward to now legalize pooling and destroy competition. I can not see that it will have any material effect upon the question of rates if the Commission is given power to fix rates in case of a pooling agreement or arrangement, but the question of service performed for the rate charged is quite as material as the rate itself, both with respect to the carriage of freight and passengers. There would be no way in which the Government can successfully regulate the quality of the service which shall be rendered for a given rate. It could only do so in a general way. I predict that in case Congress should legalize pooling that it will be found by experience that it will be at the sacrifice of the service in point of quality and time. There does not seem to be any necessity for it. It is not necessary in order to prevent rate wars, since there can be no competition if the railroads all maintain their published rates. If one reduces a rate, the other does or may, so that very little traffic will be diverted by the reduced rate from one line to another. Besides, most of the rates are made practically by agreement between the interstate lines.

I have no hesitancy in saying that it is an advantage to the railroads to be able to agree upon the rates which shall be charged, and such agreement through traffic associations or otherwise might be legalized provided the rates thereby made are put into effect under such agreement and are subject to the supervision of the Commission in every case as a condition precedent to being effective, and thereafter to investigation and change upon complaint. That sort of an arrangement would leave out the danger of rate wars, which is the main argument in favor of pooling, but would leave the public the benefit of competition in the matter of service, as each road will undertake then to render such service as to induce the largest movement over its lines, and still be left with the incentive to afford the best service possible to get the business. I believe in retaining the present law with such additions only as are necessary, and after perfecting it let it be fairly tried. It is like having a complicated machine, every part of which works well, but there is a want of sufficient power to produce results. Let the power be given the Commission to operate under the present law and the public will have as simple a remedy as possible, and the railroads, knowing that the remedy exists, will adjust most of the disputes with shippers without compelling a resort to the Commission.

I desire to impress upon the members of this committee that if you make a provision in any bill which contains an interstate commerce court that such court shall pass upon the reasonableness or the fairness of the decisions of the Commission, or their justness, you might as well abolish the Commission entirely, because the question of reasonableness is a question of fact, and the court would simply be substituting its judgment for that of the Commission without the power to fix the rate for the future. In such a case the court would be destructive of the power of the Commission, as it might happen that its judgment was different from that of the Commission.

The making of the rate by the Commission is a legislative power, and it has never been considered that the courts have jurisdiction to inquire into the reasonableness of the action of a legislature or a legis-

lative commission in determining the facts. It is unnecessary, because if the Commission acts lawfully, within the limits of the Constitution, there need be no fear that serious injustice will be done, and if Congress has not confidence in the Commission acting justly in the premises, upon what consideration might it be expected that the court would be better qualified to do so?

Suppose, for example, that the Commission should decide that a given rate, under all of the circumstances was unreasonable to the extent of 1 cent per 100 pounds. That would be a matter of judgment. Now, suppose that the court should hold according to its judgment it should not be advanced and set aside the findings of the Commission simply because the court might think that the Commission's decision was not reasonable. There is just as much sense in having another court to pass upon the reasonableness of the judgment of that court, and so on, ad infinitum, as to have a court determine whether the Commission's decision is reasonable.

I desire also to call this committee's attention to the fact that in the bills so far presented, wherein it is proposed to have a court to review the action of the Commission, it is only the railroad that is given the right to review. Can it be possible that the railroads have greater rights in this particular than the public? I say that if the court is to be given the power to determine whether the Commission's decision is reasonable the public and the shipper is as much entitled to it as the railroad and they will demand it, and on behalf of my clients I do demand it at the hands of this committee. My judgment is that it will be found that it is destructive to the act to put any such provision in it.

THE BOND OF THE RAILROAD TO REFUND TO THE SHIPPER.

I undertake to say that this provision is simply an illusion in the form in which it appears in any of the bills which I have seen. I am speaking plainly, but to the point. What need is there for the bond of a solvent railroad company to bind itself to pay back to the shipper the unreasonable charge but to burden the shipper to sue the railroad company on the bond in order to recover it? He has exactly the same right under the common law to-day, and he has the same right under the interstate commerce law to-day. He can not resort to it; he will not resort to it; and it will be of no benefit whatever. The present act provides fully for reparation. It provides that in case the rate is unreasonable or otherwise unlawful the Commission may order what reparation it recommends that the carrier shall pay to the shipper, and the shipper can make his case in court by filing a petition to recover that money, in the trial of which the findings of the Commission are prima facie evidence. If he succeeds, the court allows costs and attorneys' fees. Therefore, the bond proposition is an entirely useless incubus in cases of solvent railroads and no suit will ever be brought upon it.

WARNING.

From a careful and exhaustive study of the interstate commerce act and the decisions of the courts with respect to the same, having detailed knowledge of its provisions and the practice under it, I beg

to warn this committee, if it desires effective legislation, to act not so hastily as to turn out and present a bill that does not bear the impress of deliberate and careful judgment.

EXHIBIT No. 1.

Cattle rates from Southwest higher than any time in fifteen years—General complaint—Rates for Southwest fixed by combination of the railroads—Competition eliminated—Testimony of railroad officers in the matter of class and commodity rates from St. Louis to Texas common points in force over the Missouri Pacific and other railways.

[C. HAILE, freight traffic manager of Missouri, Kansas and Texas Railway Company.]

Mr. BRYSON. Had you in the face of these new rates of March, 1903, taken into consideration the water-competition feature from New York to Galveston? Was that a controlling element?

Mr. HAILE. Possibly not a controlling element, but a very important factor in the making of the rates; it was really one of the strongest factors that appeared to my mind. I had, previous to our announcement of this advanced scale, a great deal of talk with the representative of the Mallory Line.

Mr. BRYSON. That line is not subject in any way to the filing of tariffs with the Interstate Commerce Commission?

Mr. HAILE. I understand not from New York to Galveston; so far as parties to a through rate is concerned, I do not know whether they file their rates or not. But I was going to say that I had a talk with the view of determining whether or not it was possible for them to make any advance, in view of the competition they have from tramp vessels—schooners. I was satisfied in my own mind that so far as the rail lines from St. Louis were concerned—and from Chicago we were all of one opinion—that the rates ought to be advanced; that there was no reason why they should not be, and every reason from our own standpoint why they should. The question arose with me as to whether or not it was possible to get these rates, these water rates, which might be used to defeat any through tariffs, advanced, and I was satisfied from this conference with Mr. Warfield that they could make some advances in their rates, and I knew about what volume of advance that would probably be.

Mr. BRYSON. There was no understanding or agreement between you and the water representative what the advance would be?

Mr. HAILE. Absolutely none.

Mr. BRYSON. You felt it your duty to advise yourself whether your line, independently, could undertake to advance the rates on your line?

Mr. HAILE. Yes, sir.

Mr. BRYSON. I think that is all.

Commissioner PROUTY. Mr. Haile, most of the articles to which these advanced rates apply are produced both in the Middle West and on the Atlantic seaboard, are they not?

Mr. HAILE. A great many.

Commissioner PROUTY. And there must be a relation of rates between those two points and Texas common points?

Mr. HAILE. Yes, sir.

Commissioner PROUTY. Would it be possible for you to advance your rates without the rates from the Atlantic seaboard were advanced?

Mr. HAILE. I think the result would be to divert to eastern markets a great deal of the tonnage now handled from the middle western markets.

Commissioner PROUTY. As a matter of policy, you would not be disposed to make a general advance unless there was an advance there?

Mr. HAILE. Yes, sir.

Commissioner PROUTY. On the other hand, it would not be possible for them to advance their rates unless you advanced yours?

Mr. HAILE. I think not.

Commissioner PROUTY. Before the rates of the Cromwell Line were advanced, had you any talk or understanding with the managers of that line that if their rates were advanced yours probably would be?

Mr. HAILE. I suppose you mean the Mallory Line?

Commissioner PROUTY. Yes; the Mallory Line.

Mr. HAILE. I had a talk, as I say, with Mr. Warfield, and I told him it was the very earnest desire on the part of our people to make an advance in our rates from St. Louis, that naturally we could not do it unless there was an advance from New York, and I asked him, in view of the competition that he had to meet from New York to Galveston in the way of schooner competition and tramp vessels, whether they would bring about an advance in their rates to Galveston, and the net result of the interview was that they could probably make some advance without affecting in any marked degree the volume of tonnage they had. That was with reference primarily and, in fact, I think, solely to the business between New York and Galveston. I felt satisfied in my own mind that if they could make that advance, if they were satisfied that they would make the advance to Galveston they would not hesitate to make it to the interior.

[Mr. Haile had just stated that he had a theory respecting increase in damage claims, and that he could state it if desired.]

Mr. COWAN. You may do so.

Mr. HAILE. That is, that the cattle men themselves, believing from their standpoint that these advances in rates were not justified or proper, made up their minds to avail of every pretext or technicality to get back as much of that advance in the way of claims as possible. I do not mean that that resulted from a dishonest purpose, but it followed the advance in rates and was the result of the determination on their part to secure from the railroads every cent it was possible to get on such a showing as they could make.

Mr. COWAN. Now, Mr. Haile, that might apply to some of those who have made claims, but the evidence taken in this case as shown by many men engaged very extensively in the cattle business is that they have had very few claims. The principal cattlemen in Texas have very few claims, do they not?

Mr. HAILE. I know some men who do not.

Mr. COWAN. There may be that disposition on the part of some men.

Mr. HAILE. I think so.

Mr. COWAN. There has been a general complaint of an advance in rates, has there not?

Mr. HAILE. Yes, sir; there has been complaint.

Mr. COWAN. Is it not a fact that resulted in the Cattle Raisers' Association inviting a conference with the traffic officials at St. Louis some three years ago, in which the representatives of the association immediately met you and a number of traffic men to talk over the matter and see if we could not get the advances of 1899 reduced? Do you remember that?

Mr. HAILE. Yes, sir.

Mr. COWAN. And after giving consideration, you all declined to reduce them?

Mr. HAILE. Yes, sir.

Mr. COWAN. The advances which were made in those rates made them higher than they had ever been before?

Mr. HAILE. I think they are.

Mr. COWAN. Is it not a fact that for ten years previous to the advances made in 1899 the rate from Fort Worth, for example—which would be a fair one—had never been more than 31½ cents per hundred pounds?

Mr. HAILE. I will tell you. I think that is substantially true, Mr. Cowan.

Mr. COWAN. Is it not a fact that during that period—say, from 1890 up to 1899—that the rates had gone from 25 to 28½ cents for the major portion of the time to Kansas City?

Mr. HAILE. No; I find that such rate was, in 1889, to Kansas City. 28½ cents, and it was advanced from that figure up to 33 cents, where it remained for a series of years, and was reduced again to 28 cents, and then advanced to 33½ cents, and then again to 36½ cents.

Mr. COWAN. When I said 31½ I meant 33½ cents; at all events, the 36½-cent rate to-day is a higher rate than has existed since the organization of the Interstate Commerce Commission and since we have had a file of the tariffs with them?

Mr. HAILE. Yes, sir.

Mr. COWAN. What else could you expect, then, than that the cattlemen would complain of the advances in these rates, when they did not know anything about your operating expenses and you have increased your volume of traffic?

Mr. HAILE. Oh, I expect them to complain.

Mr. COWAN. What better standard is there which a man should take than

what has voluntarily been kept in force for a long period of years? What better standard is there for him?

Mr. HAILE. It would depend on the conditions entirely under which that rate had existed.

Mr. COWAN. That rate existed under a condition. we will say, of competition?

Mr. HAILE. I think it is clearly shown in the testimony which has been taken in this case that it was an unreasonably low rate during all that period.

WEDNESDAY, *January 25, 1905.*

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

STATEMENT OF MR. H. T. NEWCOMB.

Mr. NEWCOMB. Some time last summer I wrote a magazine article contending that the question whether rates had been advanced or decreased could not be decided without reference to the changes in the value of the standard money in which the rate is paid. I have since been requested by some of the railroad companies to apply the principles that I used in that article to this Senate Document No. 257, in which the Interstate Commerce Commission alleged that there has been a great advance in rates, and made the statement, which has been repeated here, that this amounted to about \$155,000,000, as compared with the year 1899, in the single year 1903.

Mr. BACON. One hundred and fifty-five million dollars in the last year, as compared with the next preceding year, not the four years past.

Mr. NEWCOMB. I beg Mr. Bacon's pardon; I think Mr. Bacon is in error in regard to that. I will read the statement, which is on page 5 of this document:

The average rate per ton for this year was \$1.0793, or nearly 12½ cents per ton greater than the average rate per ton for the year ending June 30, 1899, this difference amounting in revenue to \$155,475,502 over what it would have been at the average rate of the first-mentioned year.

Mr. BACON. I stand corrected.

Mr. NEWCOMB. Now, it is rather startling, Mr. Chairman, that this statement depends on an erroneous use of the Commission's own figures. The figures used by whoever prepared this report differ from those used by the statistician in the statistician's report, and the differences, as between the year 1899 and the year 1903, amount to one-third of the total advances. The author of this report gives the rate per ton for 1899 as 95 cents. As a matter of fact, it was 97 cents. He states the first year of his comparison too low. He gives the year 1903 as \$1.07, when, as a matter of fact, it was \$1.05. So that he puts the first year 2 cents too low and the last year 2 cents too high, and if we correct those figures by using the figures in the statistician's report, which were open and available to the author of this report, at once \$53,000,000 of this increase disappears. I will furnish, to go with my remarks, a table showing the figures furnished by the auditor for this report, and the reports which are available to the statistician. But, Mr. Chairman, a calculation of that sort depends entirely upon the selection by the author of the report of the year

which he shall make the basis of his calculation. These rates per ton have differed from year to year, and anyone can get any results which he pleases by using a selected year. In order to show this I have made a table on precisely the same basis, taking the year 1904, and I show in columns the results as compared with the Commission's table; but it appears from my figures, using the year 1904 instead of the year 1899 as a basis, that on that comparison there was a lowering of rates amounting to \$234,000,000.

I do not attach great importance to that table. It merely shows how easy it is to use figures of this sort to get any result you want. The Commission might, perhaps, have gotten an even higher figure if they had taken another basis, and I can get a much higher figure again by having some other basis. Anything in the world can be gotten by taking figures of that kind. One result is as real as the other.

It is proper to call the attention of the committee to the increased expenses of railroad companies as between those two years which were used for that comparison. Between 1899 and 1903 operating expenses increased \$400,000,000. Wages paid to the employees of the railroads increased \$222,000,000. The cost of maintaining structures and equipment and roadbed increased \$175,000,000, and the fuel bills of the railway companies increased from \$77,000,000 to \$146,000,000, or \$69,000,000 altogether.

I have also made some calculations showing the efficiency of money payments for fuel, for operating expenses, for wages, and so forth. It appears that for every dollar paid out in wages in 1899 the railways were able to carry 294 tons of freight a mile. In 1903 for each dollar paid in wages they were only able to carry 240 tons a mile. So that with that slightly higher rate it affected their earnings per ton per mile, and they could only earn from freight \$1.88 where they earned \$2.13 in the earlier year.

The efficiency of the amount paid in wages was less in 1903 than it was in 1899. I have made similar calculations relating to coal, which show that for a dollar paid for coal the railways were able to earn \$9 from freight in 1903 where they earned \$13.25 in 1899.

The same is true of their operating expenses, the figures being \$1.05 in 1903 as against \$1.19 in 1899. On page 6 of the report we find considerable discussion as to the advances of rates of particular articles. I selected the article of hay, which was advanced from the fifth to the sixth class, and that advance is now the subject of litigation. The Commission states that this is an average of about 80 cents a ton on 12,000,000 tons. I do not know whether that average is correct or not, but perhaps it is worth while showing that the price of hay has gone up so much during the year that if the railroads did get the advance of \$14,000,000 which the Commission thinks they got on account of this higher rate, the additional farm value of the amount moved during that time was \$34,000,000, or two and a half times as great; and it is worth noting that during the four years used for this comparison, although the crop was never as great as the crop of 1899, the value of hay to the farmers of the United States was \$204,000,000 more than it would have been at the price of 1899.

It was stated here the other day, I think yesterday, that there had not been any reduction in freight rates. I made a comparison on the basis of the report published by the auditor of the Commission about

year ago, called a "Forty-two year review of railway rates," a document containing a good deal of very valuable data. There are three great classifications, you know, of the freight traffic in the United States. The official classification applies to all business east of the Mississippi River and north of the Ohio and Potomac rivers.

In that classification during the period from 1887 to date—or to the date of this report, some time in 1902—the net result of changes in the classification has been that 95 articles are classified higher than they were at the beginning of the period and 121 articles are classified lower than they were in the beginning of the period.

In the western classification, which applies on all classified traffic west of the Mississippi River and the Great Lakes to the Pacific coast, 65 articles are classified lower and 23 are higher than they were before. In the southern classification, which applies east of the Mississippi River and south of the Ohio and Potomac rivers, there are 254 reductions as against 125 advances. Those are net changes.

The CHAIRMAN. In what period is that?

Mr. NEWCOMB. That is during the period covered by that report. The auditor of the Commission receives something like 300 tariffs per day. They all make changes, and it is the common impression, I am told, that more of those changes are downward than upward. I took the pains to make some inquiries yesterday afternoon concerning the changes, and I found that within a recent period there have been some important reductions. Thus the rate on lumber from St. Louis, Kansas City, and river points to St. Paul and Minneapolis, Minnesota, and Wisconsin practically has been reduced from 16 to 14 cents very recently. Sugar from the Atlantic seaboard to the Missouri River and to New Orleans territory has been reduced. There has been a reduction on crackers and cakes and bakery products throughout the entire West, and on soft coal there has been a reduction from the Mississippi River to Iowa. Only one-half of the regular rates on seed wheat to Iowa, Minnesota, and Dakota are now being charged.

The lines from Chicago and Milwaukee to the Mississippi River have made a reduction from 10 cents to 9 cents on wire articles, nails, etc. The grain rate from Mississippi River crossings to Ohio, Indiana, Michigan, etc., have been reduced from 1 to 5 cents each. There is a great reduction pending covering the entire through south-bound business from the Ohio River, Chicago, Cincinnati, St. Louis, and all points using the Ohio River as a base to the great cities of the South, and that will affect all contiguous territory.

As a result of these reductions all the rates from Baltimore, New York, Philadelphia, and Boston, and similar territory in the East have been reduced so that practically all manufactured products moving into the South have considerably lower rates than they have been taking. And those are voluntary reductions. The rates to Atlanta are reduced 9 cents on first-class freight, about 9 per cent of the old rate. The reduction on second-class freight is 5 cents, on third-class 3 cents, on fourth-class 5 cents, on fifth-class 4 cents, and so all along the line. Other cities the rates to which are reduced are Dalton, Cartersville, Athens, Elberton, Augusta, Macon, Milledgeville, Albany, and Americus, and, as I said, practically all of the territory in that region.

I have here from another Government document a table showing the course of rates on wheat and flour from Chicago and St. Louis to New York. These are the most important rates in the country. The Chicago and New York rate is not only the basis of the rate on all grain from any territory west of Buffalo and Pittsburg, and a line drawn through there—what we call the Central Traffic Association territory—but by the application of differentials is made the rate to all eastern territory on all that freight, whether for domestic consumption or exportation. It is far the most important rate in the country. That rate from Chicago to New York has declined per bushel. It was \$6.63 in 1899, the average for the year, and \$6.17 was the average for 1903. The table shows a decline from 15.7 cents to the present basis. I have compared the rates per bushel on wheat from Chicago to New York with the farm value of wheat, and it appears that where it took 1 bushel in every 5½ in 1899 to pay the freight from Chicago to New York, it only takes 1 bushel in every 7.82 bushels to pay the freight at the present time. That is, 7.82 bushels of wheat will now move from Chicago to New York for the price of 1 bushel, while only 5 bushels would move at that price in 1899.

Mr. BACON. I would like to ask Mr. Newcomb if he considers this a fair comparison, as regards the price of wheat, which is now very high. It is 25 or 30 cents higher now than has been the average price during the last five years.

Mr. NEWCOMB. For 1902 the comparison would have been: It took 1 bushel in 7.20 as against 1 bushel in 5.25 in 1899, so that about the same result would follow in last year or any other year of that series.

STATEMENT OF HON. H. STEENERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. STEENERSON. Inasmuch as I have prepared a couple of drafts of a bill to accomplish the purpose recommended by the President in his message in regard to extending the powers of the Interstate Commerce Commission, I thought that I would appear before this committee and give my views.

In the first place, I shall assume that the reason for this legislation is apparent to the committee and that the evils to be remedied are recognized, as they seem to be by the public sentiment throughout the United States as well as by the Executive. So that it is not necessary at all to dwell upon that feature. I will assume that the necessity for the legislation exists and that it is desired to meet that necessity. Neither do I care to discuss the objections which have been made to this legislation, that it would injuriously affect capital invested and labor. Those facts are not new to the committee nor to the American people. Those objections have been heard in the United States almost in the same terms for the last thirty-five years, almost ever since the first granger legislation in Illinois and other western States.

I recall very distinctly that I served in the senate of Minnesota in 1885, just twenty years ago, when we proposed to establish a railway commission to regulate freight rates by law, and these same objections were made. We had ten years before that time prescribed by a statute the maximum rate for transporting passengers—3 cents a mile. That was twenty years ago, and that is the maximum rate

to-day in Minnesota; but at the time it was prescribed every railway man in the country said that it would ruin and bankrupt all the railroads and stop all railroad construction. And when we sought twenty years ago, as I say, to give this power to public officials, dire disaster and ruin was predicted. But what followed? Of course the act of 1885 in Minnesota did not contain the power, but two years later it was conferred, and although that was not in the proper language, so that it was set aside in the milk-rate case by the Supreme Court, later the State did put it into their law—in 1891—and that has been in operation ever since, and we have reduced the charges for transportation on grain, and I brought that case before the Commission myself and conducted the trial of it, whereby the transportation rate on grain over the Great Northern was reduced, and the railroad, after it was put into effect, adopted the same rate as was prescribed by the Commission. That has been our experience; and in every instance the railway companies' representatives have predicted that it would ruin them, whereas, in fact, it has benefited them; and if you ever refer to the book written by A. B. Stickney, president of the Chicago and Great Western Railway, in 1893, fourteen years after the passage of the interstate-commerce act, I think you will be satisfied that he proves to your entire satisfaction that instead of being an injury to railroad capital and railroad labor, public regulation and control of transportation rates is a benefit. The power, when it was exercised without limitation on the part of the State by the transportation companies, was so abused that in many instances railroad capital was entirely wiped out and destroyed. So that I will not dwell upon that feature of the case.

My studies have been confined lately to the legal aspect of the proposed bill. But in order to understand fully the legal form which the proposed statute should take, I want to remind the members of the committee, although I am quite satisfied that they all know it, that they should bear in mind that there are certain principles of law that are absolutely settled and are not subject to controversy in the United States, although some of the speakers who have been before the committee do not seem to recognize the fact. These principles have been settled by the Supreme Court beyond any question of doubt. It is settled that the exercise of the power to prescribe a freight rate for the future is a legislative act, and that, further, such a legislative function can not be exercised or performed by any court. Now, inasmuch as the Constitution says that the judicial power in the United States shall be vested in one Supreme Court and such other inferior courts as the Congress may from time to time establish, it is apparent that if you call a body a court, they are thereby simply endowed with judicial power and not with legislative power, and consequently, under the decisions of the Supreme Court, can not review the action of a commission that prescribes rates for the future, except with this limitation—and that is the only qualification that exists—that they may review that action because it is the same as a law, the order of the Commission in regard to rates in the future, or the same as an act of Congress prescribing what rate shall be charged in the future. They stand absolutely on the same footing, and the power to delegate that authority is conceded. There is only one ground upon which a court can review that kind of legislation, whether it is by act of Congress or by order of a commission,

and that is upon the ground that it takes private property without compensation or without due process of law, in violation of the fifth amendment to the Constitution, in case it is made by the United States authority, or in violation of the fourteenth amendment to the Constitution of the United States in case this legislative authority is exercised by a State.

Mr. TOWNSEND. I would like to ask Mr. Steenerson to define a word, if I may.

Mr. STEENERSON. Certainly.

Mr. TOWNSEND. In most of these bills it is provided that the court may review the decision or order as to its reasonableness and lawfulness.

Mr. STEENERSON. Yes.

Mr. TOWNSEND. What can you say as to what "reasonableness" would include; whether that is a question of fact?

Mr. STEENERSON. No; I conceive that probably the strongest bill that was ever before a court in favor of the idea that the court could review the question upon the facts was in the case in the State of Minnesota, the case which I referred to which I argued before the Commission myself; and it was argued by General Clapp, our attorney-general, before the supreme court of Minnesota. There the court stated that they must construe the statute to mean that it only confers upon the court judicial power—that is, power to review the action, whether it is confiscatory or not confiscatory.

Judge Mitchell, whom I think everyone familiar with the judicial history of the State will recognize as one of the ablest judges that ever sat on the bench in that State, was particular to emphasize the fact that the only ground upon which any court could review the question was by virtue of the constitutional provisions that I have referred to, in order to determine whether or not it was confiscatory, or taking property without due process of law.

Mr. TOWNSEND. Would not that be covered by "lawfulness?"

Mr. STEENERSON. I think the court would be bound to construe "lawfulness" as simply "constitutionality." Now, these principles having been settled beyond peradventure, that is that the function is legislative, and that it may be exercised either by Congress directly or by a Commission, and that no power exists anywhere to review that action except upon the ground that it violates the Constitution, then where are we? The right of a court to enforce the Constitution is not dependent upon any statute of a State or of Congress. When I drew my first bill, which was referred to this committee, I modeled my bill, for want of any more extended knowledge of the subject, after the law of Minnesota—that is, I took the interstate commerce act, and I took section 13 of that act and put in there the words of the Supreme Court in the maximum rate case as they should have been in there to confer the rate-making power. I put those words in there and then I had special provisions for a review in the court somewhat similar to the provisions of the Cooper-Quarles bill, modeled after our statute; but upon reflection I made up my mind that this was utterly superfluous and unnecessary, because if the courts have the right to review it in order to enforce the constitutional provisions against confiscation, then they do not need any statute, any more than if you were to prescribe to-day that the maximum to be charged for transporting passengers over the railroads should be 2½ cents a

mile. That maximum rate can be attacked, and if they could show before a United States court anywhere that it was confiscatory of their property, then that court would enjoin the enforcement of that law as unconstitutional, without our putting into the act that they may do it, and prescribing the manner of doing it. So that I hold that it is better to leave the method of procedure to review these unconstitutional orders to the courts themselves. They have the power, and that is the only ground upon which they can interfere.

I therefore revised my bill, and I drew a bill, which is now No. 18043, modeled after this theory. I took section 13 of the interstate-commerce act and put in there that the Commission has the power to order a rate that is excessive in their judgment to be discontinued, and to substitute another schedule, and that the rate shall be the rate for the future. That is in unmistakable terms. After doing that I provide that that rate, so prescribed by the Commission, shall be the lawful rate, and then if the railroad company refused to obey it in the future, such railroad shall be subject to a penalty of \$1,000 a day. That makes it take effect at once when the Commission orders it to take effect. And further, I provide that the penalty may be recovered by the United States authorities, and shall be paid into the Treasury of the United States. We therefore have a complete law in itself, and the order of the Commission operates the same as an act of Congress. Now, it is true that that may be attacked because it is confiscatory. Very well; let them attack it, the same as they have attacked the statutes of Nebraska and other States as being confiscatory.

The question that is raised, undoubtedly, in the minds of many members is, How are we to avoid this interminable litigation that takes a long time, and which the Interstate Commerce Commission complains of?

They say that it takes several years in the courts, and presumably it was to avoid that delay that the proposed bill, known, I believe, in the papers as the Hepburn bill, the bill introduced by the chairman of this committee, provides for the extensive machinery to enforce it—nine circuit judges and a court of commerce, with all the officers necessary to carry out its functions, entailing an expense upon the United States Government of probably \$200,000 or \$300,000 a year. The idea in that must be that it will expedite cases of this kind and the settlement of those questions, and the only case of this kind that can arise is as to whether or not the rate prescribed is confiscatory or not. Let us bear that in mind, then. I claim that this machinery and expense is unnecessary, and for this reason: The records of the Commission and of the courts show that in no instance has the claim been made that the rate fixed by the Commission was confiscatory. What they did claim in the case that went to the Supreme Court was that the Commission did not have the power to fix any kind of a rate, confiscatory or otherwise. And it was the question whether the words in the law granted them that power. That was the question argued, and not any other.

Now, this same question would arise in a new law, because it would take years to find out what the law meant. A statute is never settled until the highest judicial authority in the United States has construed it. For that reason I think it would be a help to follow as closely as possible the old law, which has been construed, before we add any-

thing to it. Further than this, if the committee desires to carry out the full meaning of the President's recommendation—that is, that the rates shall go into effect, even if they are confiscatory, which I understand to be the meaning of the recommendation in the President's message—then, of course, leaving that as it was in the bill advocated by my friend on my left here, it would be undoubtedly unconstitutional, because you can no more confiscate a man's property for six months or a year than you can for one hundred years. But if you desire to carry out that, and if it is a delay in having rates take effect that you are afraid of, I have a suggestion to make to the committee, although it is not in my bill, whereby even that object can be accomplished, and I desire to call attention to this fact with that in view.

There is a difference in the provisions of the fifth amendment to the Constitution of the United States and the fourteenth amendment, aside from the difference that the one restrains Congress and the other restrains States. That is, the fifth amendment is a restraint upon the law-making power of Congress and the fourteenth amendment simply restrains the legislative action of the States so that they can not take property without due process of law or deprive a man of the equal protection of the law. The difference between these two provisions of the United States Constitution is this: That the one in regard to Congress, and limiting the power of Congress, says that no person shall be deprived of his property without due process of law, nor shall private property be taken without just compensation for public use. Those are the words that are not in the amendment that relates to the limitation upon States. Therefore, I say that if you desire to have a rate take effect, regardless of the fact whether it is confiscatory or not, then I believe the only way to do it would be to put in a provision something like this, to the law that I propose—that is, giving the power to the Commission to prescribe the rate for the future, and making it the lawful rate, and prescribing the penalty for not enforcing it—to add:

No court shall restrain the enforcement of any rate prescribed by the Commission under the authority of this act until after it shall have been finally adjudicated that such rate is confiscatory and in violation of the fifth amendment to the Constitution of the United States; and in the event of such an adjudication the carrier affected thereby shall be paid out of the Treasury of the United States just compensation for the time during which said confiscatory rate was enforced, to be agreed upon by the carrier and the Commission, and certified by the Commission to the proper authorities. Or, in case the amount is in dispute, the amount of such claim for just compensation shall be referred to the Court of Claims for determination, and when so determined, paid out of the United States Treasury.

Now, it might seem that that was a dangerous thing; but in view of the fact that this Interstate Commerce Commission has never, so far as I have been able to learn, prescribed a confiscatory rate or one that operated as a confiscatory rate, I do not believe there is the slightest danger. The danger that you apprehend is that the protest that it is confiscatory will be used to tie up the rate in the courts; but if we guarantee the rate made by the Commission against this confiscatory character then that objection is removed. And I am free to say that I believe that this would be a restraint upon the Interstate Commerce Commission against making rates that were confiscatory. If they knew that Uncle Sam would have to pay the loss then they would be very careful, and of course the company

could not be injured, because the amount of the loss could easily be ascertained. It would hurry up litigation, it would carry, probably, the question of whether or not the rate was confiscatory to the Supreme Court in a very short time, and during that time the matter could be computed to what extent it was confiscatory, and determined, and it seems to me that that would be taking property for a public use to that extent which the Government could pay for. That, I believe, would amount to less, if this suggestion should be adopted, then the expense of the interstate commerce court and the nine judges that are provided for in the Hepburn bill.

The CHAIRMAN. You think it would be lawful and just to permit the Government to tax a stockholder in a railroad and in that way to compel him to contribute to a loss that is suffered by reason of an unjust and unlawful benefit that a certain shipper may have had?

Mr. STEENERSON. Well, the United States Government does not levy any direct tax upon anybody; they are all indirect taxes.

The CHAIRMAN. But it pays taxes.

Mr. STEENERSON. He pays on his consumption, the same as anybody else. This is a new question to me; it only suggested itself last night to my mind, and I am not sure it would be satisfactory, but it strikes me that it would be a public purpose within the meaning of the fifth amendment to the Constitution of the United States.

The CHAIRMAN. A public purpose to aid a private shipper to ship his private property to market? You would regard that as a public use?

Mr. STEENERSON. I am not claiming that this is settled law; I am claiming that it is simply a suggestion that may be meritorious, and may not be; it may be impracticable to do so. Therefore I do not embody that suggestion in my bill. My bill simply provides that the power shall rest in the Commission to prescribe a rate for the future, makes it a lawful rate, and imposes a penalty for not observing that rate, and authorizes the collection of a fine by the United States Government. That is all that my bill does. And I believe that we can safely leave the question of a review of the law—a testing of the constitutionality of that rate—to the courts, without prescribing the method whereby it should be done, and I believe further that the cases would be so few which would be brought before the court that the present courts are ample, and that we would not be subject to unnecessary delay.

STATEMENT OF MR. H. F. SMITH, REPRESENTING THE NASHVILLE CHATTANOOGA AND ST. LOUIS RAILWAY.

Mr. SMITH. Mr. Chairman and gentlemen of the committee, I speak for the management of the Nashville, Chattanooga and St. Louis Railway and, unofficially, for all of the important railways south of the Potomac and Ohio rivers east of the Mississippi River.

I speak, sir, as a practical traffic man, having had a number of years' experience in that territory. I want to say, in the outset, that I marvel at the interest or the anxiety expressed over the railway situation, particularly in the South. I am unfamiliar with the conditions in other sections. But, as a practical traffic man, dealing with these subjects every day, meeting people, meeting their views, revising their rates, I do not appreciate, can not appreciate, our

management does not appreciate, why there should be so much anxiety over the relations between the railways of the South and the people. They are harmonious. The real captains of industry, with whom we deal, are not discontented. We have reformers in our section of the country the same as we have in all sections. They are clamorous. But the real shippers, the real developers of traffic and trade, the manufacturers, are not discontented in our district.

The honorable Interstate Commerce Commission in its eighteenth annual report refers to "the rapid disappearance of railroad competition and the maintenance of rates established by combination attended as they are by substantial advances in the charges on many articles of household necessity." It further says:

The Commission regards this matter as increasingly grave, and desires to emphasize its conviction that the safeguards required for the protection of the public will not be provided until the regulating statute is thoroughly revised.

I want to say that those views of the Commission do not justly apply to the southern territory—that there is no competition and that the rates are being advanced. In the southern country competition among the railroads was never keener than it is at the present time.

The first annual report of the Commission embraces the following statement:

A study of the conditions under which railroad traffic in certain sections of the country has sprung up is necessary to an understanding of the difficulties which surround the subject. The territory bounded by the Ohio and the Potomac on the north and by the Mississippi on the west presented to the Commission an opportunity, and also an occasion, for such a study.

That is the territory, Mr. Chairman, that I am speaking for.

The railroad business of that section has grown to be what it is in sharp competition with water carriers, who not only have had the ocean at their service, but by means of navigable streams were able to penetrate the interior in all directions.

I want to say, Mr. Chairman, that those factors of competition are as potent to-day as they were in 1887. In fact, in respect to the general transportation by water the conditions are very aggravated, the competition is very much greater. The competition, Mr. Chairman, that we have to meet is not only between carrier and carrier, but the competition that we do meet is between markets, between market and market, between product and product. The various carriers originating various characters of products—the products of the mine, for instance—are all in competition, one carrier as against the other.

As for the claim that the rates are being constantly increased, that does not apply to our territory, sir. I think I can truthfully say that 80 per cent of the changes in rates made in the South are reductions and have been for a number of years. Where advances are made they are to bring about equalization and remove discrimination and inequalities. The reductions in revenue, I should say, are not less than 90 per cent, and have not been less than that for three, four, five, or six years.

Mr. TOWNSEND. Ninety per cent of what?

Mr. SMITH. I mean that 75 or 80 per cent of the changes in rates are reductions, but that involves 90 per cent of revenue—10 per cent in revenue advances and 90 per cent in reductions.

Mr. Chairman, the influence of the Commission in our territory has been good. The occasional investigation by the Commission has had a good, salutary, and moral effect in the South, and we of the South respect the rulings of the Commission just so far as we are able to do so.

The Commission reports in its eighteenth annual statement to Congress that it has reviewed or has received 61 formal complaints in twelve months. And examination of the cases shows that only about 15 involved the southern railways. Some of them are of minor importance, as the Commission tells you. For example, some shipper has complained of the demurrage on a car of hay at Spartanburg. There are two or three such cases as that involved in the 61 complaints. That does not include what we call—or what the Commission is pleased to call—informal complaints. It has been the practice of the Commission to forward those informal complaints to the carriers directly interested, and in our territory it has always been a great pleasure to the carriers to give every attention to those informal complaints and adjust them satisfactorily to the complainants and report the results to the Commission.

The Commission in its eighteenth annual report disclaims the desire or purpose of seeking "power to arbitrarily initiate or make rates for the railways," but desires to be invested with the power "to prescribe the reasonable rate upon complaint and after hearing."

Now, in my experience I have never arbitrarily initiated any rates, and it is my business to revise rates. Those rates had been made for me long before I got into the situation of having to revise them. The traffic people of the South to-day are asking what the Commission has asked the power to do—to review and decide on the reasonableness of rates. We are constantly doing that. To avoid discrimination, the greatest publicity is given by one railroad to all of the others of its intention to change rates. Otherwise we would have a chaotic condition of rates, as you doubtless appreciate.

The whole time and attention of not less than 50 expert traffic people is given to the question of revising existing rates in the South to meet every changing condition resulting from the rapid development of the resources of that territory. Now, the wisdom of that practice as to the reasonableness of rates must necessarily be greater than could be obtained or maintained by a small commission who are occasionally having their attention directed to the territory. The danger of investing a commission with authority to revise rates and decide on their reasonableness, it seems to me, is demonstrated by the action of the honorable Commission in 1884, when it ordered the reduction in the rates from Cincinnati to eight prominent points in the South, an average reduction of 28 per cent. If the railroads had been willing and able to literally observe the order of the Commission we would have had a condition of rates in the South that would have been abnormal and very discriminatory. The order also required the lines south of Cincinnati to accept a like reduction in their proportion on shipments from Chicago.

The gentleman on my right has referred to some reductions that will become effective in the South on the 1st of February. I have been very closely associated with the action resulting from these changes, and I want to say, Mr. Chairman, that we commenced in

November and have worked industriously up to the present time to determine and arrange tariffs that will represent all of those reductions. Gentlemen, the reductions mean \$1.80 per ton on first class and 40 cents per ton on grain and many other commodities. To show you what that means to the Nashville, Chattanooga and St. Louis Railway, over 24 per cent of the tonnage of the Nashville, Chattanooga and St. Louis Railway is embraced in these commodities—grain and grain products and hay. Our railroad's proportion of that means quite an amount of revenue. The Chattanooga railroad for five years failed to pay its stockholders any dividends, notwithstanding the country was prosperous and the business of the road was materially increasing—that is, the gross earnings were materially increasing. It resumed, in 1904, paying a dividend of 4 per cent to its stockholders. It only takes \$400,000 per annum to pay a dividend of 4 per cent to the stockholders of the Nashville, Chattanooga and St. Louis Railroad. All reductions made in our rates, the reductions that become effective February 1, come out of the net. It does not result in increasing the volume of business, we can not force that beyond a natural growth, and we can not afford to reduce our expenses by modifying our service. The competition between carriers vying with each other to excel in service is too great in the South to admit of any company modifying its service if it wants to hold its business.

The CHAIRMAN. The time of the gentleman has expired.

**STATEMENT OF HON. GILBERT N. HAUGEN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF IOWA.**

Mr. HAUGEN. Mr. Chairman and gentlemen of the committee, it is not my purpose to impose upon the generosity of this committee by taking up its valuable time in an extensive discussion of the subject under consideration. Nor do I believe that I can add to or throw any new light on the subject. This is a matter to which you have given earnest, honest, thoughtful, and careful consideration for weeks, months, and years. Men of ability and eminence from all parts of this country have appeared before you, and nobody has more thorough knowledge of the subject and situation and as to what should be done in justice to all concerned than have the respective members of this committee. However, I am grateful to this committee for its generosity and courtesy in extending to me a few moments for presenting my views.

Time will not permit my going into details, nor will I undertake to discuss the constitutionality of the proposed legislation. I quite agree with the suggestion made the other day by a member of this committee, I believe by the chairman, that the questions of law or legality of the measure had better be studied in executive session rather than in the public hearings. I will content myself by saying that in view of court decisions it is generally conceded that Congress has the power to regulate transportation rates. If so, I believe that under present conditions it is the duty of Congress to legislate so as to meet a universal, and I believe just, demand on the part of shippers and 99 per cent of the people.

At present the common carriers have exercised, and do exercise, exclusive power in regulating rates. The people have no voice what-

ever. Competition among carriers has been practically eliminated. Stable, equitable, and reasonable rates are essential, and discriminations, rebates, and unreasonable rates should and must be prohibited in order that we may have the fullest development of worthy and legitimate business enterprises.

All shippers, the small dealers, the large dealers, the small towns, the large towns, all cities, villages, farmers, and manufacturers, including every person and every community, should be treated alike. That is, common carriers should charge a like amount for like services under similar conditions. It is a question which vitally affects every line of business. The interests of the common carriers and the people are mutual and each is dependent on the other. The question should be dealt with judiciously, in a broad and intelligent manner, and in a spirit of justness and fairness to all concerned.

The railroad companies have rights and their rights should be respected and protected. But the people also have rights and are entitled to have consideration, and should and must be protected against the invasion of powerful and unscrupulous interests which compel them to pay, involuntarily, tribute to the common carriers, which in the aggregate amounts to hundreds of millions every year.

I am one of those who believe the common carriers have abused their power, and carried it to a point so as to absorb about \$1,000,000,000 as net profit every year. The real value of all railroad property is less than \$10,000,000,000, yet they absorb as net profits one-third, and it has been estimated as high as one-half, of the total increase of wealth of the United States. Only about 1 out of 22 employed in gainful occupation in the United States is employed in transportation services. The net profit from one day's labor in transportation is equal to one-half of the earnings of 22 in other occupations. Not that the employees in transportation get larger pay than those engaged in other occupations, but I am speaking of profits to the owners and operators of the various enterprises. The profit of \$1 invested in railways is equal to one-half of every \$9 invested otherwise.

Just think of it! Railroad property with a real value of less than one-tenth of all the wealth of the United States, employing less than 1,500,000 of the 29,000,000 people engaged in gainful occupation, earns as net profit an amount equal to one-third of the total increased wealth of the United States. Compare it with agriculture. Railroad property is valued at less than \$10,000,000,000. The value of all farm property, according to the Federal census report, is more than \$20,500,000,000. Five million seven hundred thousand families, or more than half of all the people, live on the farms. More than 10,000,000 are engaged in agricultural pursuits. The railroads employ 1 for every 8 employed on the farm, yet the railroads' gross receipts are equal to two-thirds of those from the farms.

The Interstate Commerce Commission's report shows the gross receipts of the railroads to be nearly \$2,000,000,000. The Department of Agriculture estimates the value of all farm products, except cotton, at \$2,700,000,000. To this add 12,000,000 bales of cotton at \$40 per bale, or \$480,000,000—all told, \$3,200,000,000.

But, as I before stated, I have not time to go into the details.

In view of this, and the various complaints coming in from all parts of this country, as to excessive, unjust, unreasonable, and dis-

criminating rates, which I believe are well founded, it is high time, and our duty, to give the desired relief. And as to that I think we are generally agreed. The question then is, How shall we obtain the best results? How shall it be done?

Congress as a body can not examine, investigate, and prescribe rates in detail, as that would be a physical impossibility; but it can delegate that power to some commission. I believe this power should be delegated to the Interstate Commerce Commission, a Commission I believe made up of men of integrity, intelligence, sound judgment, and who have had extensive experience, and who are more competent to deal with the questions than any new commission or tribunal. In fact, they are experts. If they were not such when appointed, they have become such through long service. They are men learned in the law. We have this Commission, maintaining it at a large expense; and as some one has suggested, it is now more ornamental than useful. In view of their experience, high standing, and ability, I believe this Commission should be given exclusive power, after full investigation and hearing, to determine and prescribe what to them seem just and reasonable rates.

At the suggestion of a member of the executive committee of the interstate commerce law convention I introduced a bill which has been referred to your committee, which provides that this power shall be conferred on this Commission. The bill was drawn by Mr. Call, of California, who is reported to have had much experience in cases before the Commission. My understanding is that the bill was drawn by him at the request of members of the executive committee of the interstate commerce law convention, and that the bill, if enacted into law, will carry into effect that which was contended for by that convention.

I take it from a statement made by this member of the executive committee of the interstate commerce law convention that this bill voices the sentiment of that organization, an organization which represents hundreds of boards of trade, business organizations, and State granges from all parts of this country; an organization ably represented by the worthy gentleman, Mr. Bacon, who has so earnestly and honestly put forth his untiring energy for many years to secure just legislation.

I understand that the features of this bill meet with his approval; that is, that if the Interstate Commerce Commission, upon investigation or hearings, finds rates to be unjust and unreasonable it shall establish a just and reasonable rate; that its findings shall be final, and shall not be subject to the review of courts, except for manifest violation or error of law; that when once determined by the Commission the rates are to take effect immediately, and that the Commission's rates shall not be suspended by reason of an appeal; that the rate or rates established by said Commission shall not be stayed, suspended, modified, or annulled otherwise than by said Commission in the establishment of a new rate or rates or by a final decree of a United States court of competent jurisdiction for manifest violation or error of law, giving to this Commission mandatory power; that is, power to enforce its findings.

What is the function of a judge? I understand it to be to interpret, to construe the law. The jury is called in merely to determine the merits or demerits of the claim and the amount to be awarded.

I have no special pride in any particular bill, just so that effective legislation can be had. We should legislate so as to meet this just demand of the people. I am not so particular about whose bill will be reported as I am to have some bill passed that will give the desired relief; and if the bill introduced by me can be improved upon, very well—and I believe it can—I will most cheerfully support it. If I had my way about it I would make it reach out further and deal with rebates, private cars, etc., but it seems to be the general opinion of the friends of the proposed legislation that these matters should be dealt with separately at a later date.

Personally I am willing to submit to their judgment in this respect.

I thank the committee for its indulgence and its kindness and courtesy extended to me.

The CHAIRMAN. Mr. Bacon will be recognized for the fifteen minutes that he expressed a desire to have.

STATEMENT OF MR. E. P. BACON.

Mr. BACON. Mr. Chairman, it would be impossible for me, it would be impossible for anyone, in the limited space of time which has been allotted, to properly review the statements which have been made during the past two weeks of the hearings of this committee and the arguments which have been presented, the statements undoubtedly being intended to be correct and the arguments to be solid; but I see many inaccuracies in the former and many sophistries in the latter, and I really feel, gentlemen, that it is due to the interests which I represent—463 commercial organizations throughout the United States, scattered in every State in the Union with the exception of two, and two of the Territories of the country—to reply to many of these statements and arguments, and I humbly ask you to accord me on another day, to-morrow if possible, at least half an hour in addition to the time that I shall have on this occasion.

But I will present what I may be able to during these fifteen minutes that are assigned to me now, which I must do necessarily very hastily.

It has been questioned by some, and denied by others, that the power which we have been seeking to have conferred upon the Interstate Commerce Commission has ever been exercised by the Commission, although it has been stated frequently and authoritatively that it was exercised during the first ten years of its existence. I have been looking up the facts in the case for the purpose of presenting them to the committee, and I find that in December, 1896, a report was made by the Interstate Commerce Commission to the United States Senate, at its request, in pursuance of the following resolution:

Resolved, That the Interstate Commerce Commission be directed to transmit to the Senate a statement showing each case in which it has ordered any carrier or carriers subject to its jurisdiction to make any change in the classification of freight or in the rates charged for moving passengers or property, or any modification in the practices affecting such charges, and in connection with every such order; the classification or rates or practices in effect at the time when complaint was filed; those in effect at the date of the order; those directed to be placed in effect; those, if any, put in effect in compliance with such order, and those in effect at the present time in each case, as aforesaid, and the reason for their action in each case.

That resolution was adopted March 18, 1896. And then followed the report of the Commission, which I will file with the committee,

dated December 21, 1896. In that report appear 69 cases which were decided by the Commission while Judge Cooley was a member of the Commission, and in which he participated during the period of his service. The last year of his service he was largely incapacitated and did not participate in decisions rendered after the 16th of May, 1891, the organization of the Commission having been April 5, 1887. In a little over four years, with his participation, 69 cases were decided in which rates or classification or practices affecting rates were ordered to be changed by the Commission, and they appear in detail in this statement of the Commission to the Senate. Commissioner Schoonmaker, who was one of the original Commissioners, participated in 59 of these 69 cases, from April 5, 1887, to November 30, 1890. From Judge Cooley's retirement until August 21, 1896, five and a quarter years, there were 63 cases decided by the Commission of the same class, each of which involved the particular rate complained of or a classification or some practice or regulation affecting the rate. And I will say that during the first four years the report of the Commission states that most of the orders were complied with, and during the subsequent period a considerable number of them were complied with. But during the latter part of the ten-year period, during which this power was exercised, the compliances grew less and less; and since the decision of the Supreme Court in 1897 that that power was not conferred upon the Commission specifically by the original act the Commission has refrained from issuing orders of that character.

Among those cases I wish to cite one which was of a very extensive character. The Chamber of Commerce of Minneapolis *v.* The Great Northern Railroad et al., decided January 3, 1893, is a case in which the Commission ordered that from certain described territory in North Dakota and South Dakota the rates on wheat should be 1 cent per hundred pounds less to Minneapolis than to Duluth. This was a decision affecting the relation of rates wholly, not the rates themselves. In certain other territory $1\frac{1}{2}$ cents less; in a certain other territory 2 cents less; in certain other territory 5 cents less. With some modifications agreed upon by the parties to the case these differentials were promptly put into effect, and it covered hundreds of shipping points in the two States mentioned to Minneapolis and Duluth. I am unable to state the exact number, but from personal knowledge, my business relations lying in fact largely in that territory, it was a very large number; I know that it covered several hundred, probably not less than two or three hundred points.

I offer these statements to show the correctness of the statement which has been made repeatedly that the Commission did exercise this power. Now, the fact that it did exercise it I do not put forth as a reason that it should be conferred upon the Commission now, but as evidence that with the exercise of that power, with the continued and frequent exercise of it, no complaint arose as a result of such action.

Mr. STEVENS. I see that it did in that case. In that case the Chamber of Commerce of Minneapolis asked that the rate should be discontinued.

Mr. BACON. With all respect, Mr. Stevens, I think you are misinformed.

Mr. STEVENS. That is the information I have gotten from a very

good source. I did not want to interrupt, but I do not want any misapprehension about it.

Mr. BACON. Let me say that to my certain knowledge those differentials are in force now and have been from that time to the present; they are in effect to-day, and have been since the agreement between the respective parties in relation to the modification.

Mr. STEVENS. The information I get is from the Chamber of Commerce of Minneapolis, stating that they have asked that the differentials be discontinued, for the reason that if the same policy were pursued Minneapolis would get no advantage from the southwestern trade and Duluth would get all the advantage from the northwestern trade.

Mr. BACON. I beg respectfully to state that you are misinformed. I am entirely familiar with the facts in this case. There are certain points in the Southwest where the Minneapolis people desire to have a more favorable differential than now exists, but in North and South Dakota the differentials established at that time are entirely satisfactory and are being observed, and I will say that the Minneapolis people would not have them abrogated or interfered with for any amount of money. I will say in this connection that I am engaged in the commission business, in the handling of grain, and I have a branch office at Minneapolis and a branch office at Chicago, my main office being in Milwaukee. I also have a branch office at St. Louis. So I am conversant from day to day with all the workings of the rates on grain from the territory in question.

In this connection I wish to read a memorandum which I made, in order to be more condensed and concentrated in reference to this report to the Senate.

(Referring to memorandum.)

The accompanying pamphlet is a printed report to the Senate of the United States in response to a resolution of the Senate of March 18, 1896. This report contains a statement of the cases, arranged according to the dates of the decisions, in which changes in rates, freight classification, or practices affecting transportation charges had been ordered by the Commission up to December 21, 1896.

The orders shown on the first 20 pages were all issued during the period between April 5, 1887, the date when the Commission was organized, and January 12, 1892, when Judge Cooley's resignation took effect. Judge Cooley does not, however, appear to have participated in any order after May 16, 1891. An order of that date appears on page 18 of the report mentioned.

An examination of the record of cases in that report shows that regulating orders were made during the first year of the Commission's existence, in which the following powers were exercised:

First. Reducing rates found to be unreasonable under the first section of the act, and prescribing a maximum charge for the future. In the case of *Evans v. The Oregon Railway and Navigation Company* (1 I. C. C. Rep., 325), decided December 3, 1897, the defendant carrier was ordered to cease and desist during the present grain season—that is, ending the 30th of June, 1888—from charging or receiving more than 23½ cents per hundred pounds, or \$4.70 per ton, on wheat transported over its railroad lines from Walla Walla, Wash., to Portland, Oreg. The rate at the time the complaint was filed was 30 cents per hundred pounds, or \$6 per ton, and when the order was

issued the rate was 25 cents per hundred pounds, or \$5 per ton. The order reducing the rate to 23½ cents per hundred pounds was complied with.

Second. Prescribing a definite and certain relation of rates as between different localities to be observed in the future. In the case of the Board of Trade Union of Farmington *v.* Chicago, Milwaukee and St. Paul Railway (1 I. C. C. Rep., 215), decided November 1, 1887, the Commission ordered that while the defendant charged a rate of 7½ cents per hundred pounds from Minneapolis and other points on its River and La Crosse divisions to Milwaukee, Chicago, and other points in Iowa and Illinois on wheat, flour, and mill stuffs it must not exceed a rate of 10 cents per hundred pounds, or a difference of one-third of the amount on the lesser charge, for transporting the like kind of property to the same points from Farmington, Northfield, Faribault, and Owatona, Minn. Rates of 15 and 18½ cents were in effect when the complaint was filed and when the order was issued. The order was complied with.

Third. Prescribing a like definite relation in rates for the future as between different commodities. In the case of Reynolds *v.* Western New York and Pennsylvania Railroad Company (1 I. C. C. Rep., 393), decided January 13, 1888, the defendants were ordered to cease and desist from charging more for the transportation of railroad ties from points in Pennsylvania to Salamanca and Olean, N. Y., than they charged for the transportation of lumber between the same points. The order was complied with.

The forms of these first orders as they were entered at the time were closely followed by the Commission in all subsequent decisions. During the first year after the Commission was organized petitions for reductions in rates were dismissed, not for want of authority to grant the relief prayed for, but because the proofs, or want of proofs, failed to make a case against the carriers complained of. The powers thus exercised by the Commission were as extensive in the direction of prescribing rates for the future as any that were attempted by the Commission in later years.

The cases above cited are only examples of orders issued by the Commission and shown in the report mentioned while Judge Cooley was a member of the Commission, and, as above indicated, he joined in authorizing the issuance of these orders.

A case decided by the Commission in an opinion by Commissioner Schoonmaker has sometimes been referred to as holding in 1887 that the Commission had not authority to prescribe reasonable rates. This was the case of Thatcher *v.* Delaware and Hudson Canal Company (1 I. C. C. Rep., 152), decided July 25, 1887. That case, however, did not involve the reasonableness of rates. The avowed object of that proceeding was to compel the application of proportions of through rates to reshipments from Schenectady, N. Y., to Boston and Boston points. The decision made rests upon the ground that the change desired would make the rate from Schenectady less than from intermediate stations between Schenectady and Boston and would thus bring about a conflict with the fourth section, unless the carrier should voluntarily reduce the rates from the intermediate stations. There was no complaint in that case that the rates from intermediate stations were unreasonable, nor was there any evidence upon that point. In this connection the

Commission used the language which has sometimes been referred to as disclaiming the power to prescribe a reasonable rate on complaint. The Commission said, as to rates from the shorter-distance stations, concerning which no complaint had been made and no evidence offered:

It is therefore impossible to fix future rates in this case, even if the Commission had the power to make rates generally, which it has not. Its power in respect to rates is to determine whether those which the roads impose are for any reason in conflict with the statute.

It was impossible to fix rates from the shorter-distance stations because the Commission had before it no complaint or any evidence; and if it had power to make rates generally, that is, without complaint or evidence, it could not have done so in the absence of some information on the subject. At that time, if the rates were found to be in conflict with the statute, it was believed that the Commission had authority to prescribe the maximum reasonable rate, and it soon afterwards exercised that authority, namely, in the case of *Evans v. Oregon Railway and Navigation Company*, above cited. In the *Thatcher* case, above mentioned, the Commission said:

If the complainant thinks the rates from Schenectady and intermediate points to Boston and Boston points are excessive, he can raise that question directly and distinctly, and the Commission can then enter upon a full investigation of the facts bearing upon it.

It is proper to add that up to the time the United States Supreme Court decided the *Maximum Rate* case (167 U. S., 478) in May, 1897, the Commission exercised on every needful occasion the authority to prescribe rates for future observance by the carriers. The last case in which that authority was exercised was in the *Milk Producers' Protective Association v. D. L. and W. R. R. Co. et al.* (7 I. C. C. Rep., 52), decided March 13, 1897. In that case the Commission found the existing rates upon the interstate transportation of milk to New York delivery points unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers, and fixed certain group rates for such transportation. This order was complied with by the different carriers.

I have also had a statement drawn off showing the cases in which the courts have refused to enforce the orders of the Commission, which is as follows.

In the following cases the courts refused to enforce the order of the Commission from the date of its organization to January 14, 1905:

* 1. <i>Ky. and Ind. Br. Co. v. L. and N.</i>	37 Fed. Rep., 567.
* 2. <i>I. C. C. v. B. and O.</i>	145 U. S., 263.
* 3. <i>I. C. C. v. A. T. and S. F.</i>	50 Fed. Rep., 295.
* 4. <i>I. C. C. v. L. V.</i>	74 Fed. Rep., 784.
* 5. <i>I. C. C. v. D. G. H. and M.</i>	167 U. S., 633.
* 6. <i>Fla. Fruit Exch. v. S. F. and W.</i>	167 U. S., 512.
* 7. <i>I. C. C. v. Tex. and Pac.</i>	162 U. S., 197.
* 8. <i>I. C. C. v. N. Y. P. and N.</i>	Never reported.
* 9. <i>I. C. C. v. L. and N.</i>	73 Fed. Rep., 409.
* 10. <i>I. C. C. v. E. T. V. and G.</i>	181 U. S., 1.
* 11. <i>I. C. C. v. W. and A.</i>	181 U. S., 29.
* 12. <i>I. C. C. v. Clyde S. S.</i>	181 U. S., 29.
* 13. <i>I. C. C. v. Clyde S. S.</i>	181 U. S., 29.
* 14. <i>I. C. C. v. Ala. Mid.</i>	168 U. S., 144.
* 15. <i>I. C. C. v. D. L. and W.</i>	64 Fed. Rep., 723.
* 16. <i>I. C. C. v. C. N. O. and T. P.</i>	167 U. S., 479.
* 17. <i>Behlmer v. L. and N.</i>	175 U. S., 648.

*18. I. C. C. v. N. E. R. Co. of S. C.	83 Fed. Rep., 611.
*19. Colo. F. and I. Co. v. So. Pac	101 Fed. Rep., 779.
*20. I. C. C. v. So. Ry	105 Fed. Rep., 703.
*21. I. C. C. v. So. Ry	105 Fed. Rep., 703.
*22. I. C. C. v. L. and N.	190 U. S., 273.
*23. Brewer v. Cent. of Ga	84 Fed. Rep., 258.
†24. Farm. L. and T. Co. v. N. P	83 Fed. Rep., 249.
*25. I. C. C. v. C. B. and Q.	186 U. S., 320.
*26. I. C. C. v. N. C. and St. L.	120 Fed. Rep., 934.
*27. I. C. C. v. So. Pac. (Kearney)	Not yet reported.
*28. I. C. C. v. So. Ry	122 Fed. Rep., 800.
*29. I. C. C. v. C. P. and V.	124 Fed. Rep., 624.

It should be noted that of these 29 cases 25 went off not upon questions of fact, but upon proper construction of the law. These 25 cases are marked with a star. The Cattle Raisers' case, marked with a dagger, was referred back to the Commission by the Supreme Court.

In the following cases the courts enforced the order of the Commission:

1. I. C. C. v. C. N. O. and T. P. R. (partially)	162 U. S., 184.
2. City of St. Cloud v. N. P.	Not reported.
3. Tileston Mill Co. v. N. P.	Not reported.
4. I. C. C. v. L. and N. (naval stores)	118 Fed. Rep., 613.
5. I. C. C. v. So. Pac. (oranges)	132 Fed. Rep., 829.
6. I. C. C. v. L. and N. (Tifton, Ga.)	No decision.

In the Tifton case defendants complied with the order of the Commission after suit was brought in the court.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BACON. I respectfully beg that the committee will take into consideration my request that I be allowed a half an hour more to-morrow morning.

Mr. TOWNSEND. Won't you put in what you have there?

Mr. BACON. I will put in the decision of the Supreme Court in the case of *Smythe v. Oliver Ames et al.*

That the vested rights of railway corporations, and their immunity from the operation of legislative action that would be unjust to their rightful interests, are amply protected by the provisions of the Constitution of the United States has been definitely settled by recent decisions of the Federal courts, notably by the decision rendered by the Supreme Court on March 7, 1893, in what is known as the Nebraska Railroad Commission case, entitled "*Smythe v. Oliver Ames et al.*" The opinion of the court, delivered by Justice Harlan, declares:

"It is settled that a State enactment, or regulations made under the authority of a State enactment, establishing rates for the transportation of persons or property by railroad that will not admit of the carrier earning such compensation as under all circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the Constitution of the United States. A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is therefore under governmental control, subject, of course, to the constitutional guarantees for the protection of its property. A corporation maintaining a public highway although it owns the property it employs for accomplishing public objects, must be held to have accepted its rights, privileges, and franchises subject to the condition that the government creating it, or the government within whose limits it conducts its business, may by legislation protect the people against the exaction of unreasonable charges for the services rendered by it; but it is equally true that the corporation performing such public services, and the people financially interested in its business and affairs, have rights that may not be

invaded by legislative enactment in disregard of the fundamental guaranties for the protection of property."

The principle enunciated in this decision regarding the constitutional limitations of legislation by a State is, of course, equally applicable to Congressional enactment.

Thereupon, at 12 o'clock, the committee took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

The committee reassembled at 2 o'clock p. m., pursuant to the taking of recess, Hon. William P. Hepburn in the chair.

STATEMENT OF HON. JUDSON C. CLEMENTS, INTERSTATE COMMERCE COMMISSIONER.

Mr. CLEMENTS: Gentlemen, I am very much obliged to you for the opportunity of saying a few things this afternoon, and I will promise not to detain you long. It is not my purpose to undertake a general discussion of the questions that are pending in the different bills or the general subject of railway regulation to any considerable extent. I felt impelled to ask the privilege of coming here mainly because of some things that have been said in regard to the manner in which the Commission has endeavored to enforce the law or perform its duty, and in respect to the decisions that have been made by the Commission and reviewed by the courts; and only from a sense of justice and self-respect do I feel justified in trespassing upon your time in asking for this opportunity.

I shall take up first the charge, as I may call it, which has appeared in one form and another here and elsewhere, to the effect that the Commission has not properly endeavored to enforce the provisions of the present law against rebates and various forms of secret discriminations, and which has been used as an argument against investing the Commission with other powers.

To begin with, I call attention to the fact that those who accuse the Commission of dereliction in this respect are the representatives of corporations that inaugurated and maintained these reprehensible practices; and you are asked in effect to discredit the Commission at the instance of those who have broken the law. Now, let us look at the facts. The Commission has instituted numerous general investigations when it has had reason to suspect deviations from the published rates, discriminations, cut rates, etc., in various localities all over the country. It is a matter of general public knowledge that that has been so. In 1902 some important inquiries were made, one with respect to grain rates from the West—from Chicago and other points in the West—to the seaboard, and in the same year another one in respect to packing-house products; and notwithstanding the Commission had on previous occasions inquired into these matters and put traffic men on the stand and had been unable to develop what it was informed in one way and another was the true situation—that is, that the law was violated—it turned out during these investigations that there was a general owning up by the carriers to violations of the law.

You have had printed here at various sessions full testimony in which one traffic man after another appeared on oath and acknowledged that there was a general practice of cutting rates and giving rebates, sometimes one form and sometimes another, both in respect to packing-house products and grain—not occasionally, but by wholesale and generally. These inquiries were instituted by the Commission, and this condition was developed. The testimony in these cases was referred to the Department of Justice with the request that proceedings be instituted for the purpose of suppressing these violations of law. The result was that a number of injunctions were obtained against the principal carriers, not all. It was not then known that an injunction would lie on behalf of the public against a practice of this sort. It was disputed by able lawyers, it was a question of doubt; and the proceedings were confined to some 12 or 13 leading roads as test cases, and also with the idea that if the law was found to be so that they could be enjoined and were enjoined that the moral effect of it would be to admonish the others, and then they could be enjoined or not as it might be found necessary. So those injunctions were obtained under proceedings instituted by the Attorney-General, or under his direction, at the request of the Commission in respect to these matters. The injunctions are still running against those roads, and they are under injunction to-day.

It is the universal testimony, not only of railroad men, but shippers, that since those investigations and disclosures and the publicity that was given to them through the press and otherwise, and the injunction proceedings were instituted and maintained, that that practice of directly cutting the rate or paying rebates has very largely disappeared. It has been corrected, and that is the universal testimony, there is no doubt about it. I do not mean to say that there are not violations of the law here and there, as there are violations of other laws, and as there always will be. You have never been able to suppress counterfeiting or theft or any other crime entirely; but with great effect and success these practices of paying rebates and shipping at cut rates, deviations from the published rate, have disappeared in the last two or three years as the direct result of these investigations, the publicity, and the exposure and the injunction proceedings which have been had. These were not all. I mention them because they occurred about the same time. I will say more; that it was a shameful condition, and was acknowledged by the carriers and by the public as intolerable, and it resulted in the passage of the law known as the "Elkins bill."

This is not all. The Commission has encountered great difficulties at every step. It has had general investigations of practices of the same sort at Minneapolis and at St. Paul in respect to flour. It was difficult to obtain testimony. It always had been before these hearings were had. As far back as 1892, when the Commission was undertaking to develop these matters, it encountered this difficulty. Mr. Counselman objected to testifying in regard to rebates, because to do so would incriminate him. Notwithstanding there was a provision in the act to regulate commerce that the testimony should not be used against the witness he objected. The Supreme Court held, notwithstanding that provision, that he was entitled to the exemption, and

that the only way a witness could be compelled to testify in such a case was to give him absolute immunity from prosecution. Then, to meet that, and to enable the Commission to proceed and obtain facts at all in respect to such matters—because it was only the parties that were guilty of the offense that knew about it—Congress promptly passed, in 1893, an act complying with the suggestion of the Supreme Court, giving immunity to a party when he testifies in respect to these cases.

Very soon after that the question was again taken to the Supreme Court, under the new law. It was said this act did not afford complete protection, that the witness was entitled to immunity from the exposure it would subject him to; and, after a course of litigation and appeal, the Supreme Court sustained that act, and since that time the fact that it may incriminate a party is no reason why he shall not be compelled to testify in regard to these matters. So you see it took a long time to get that question settled. Again, in the Brimson case, in Chicago, where we were investigating the facts in connection with the Illinois Steel Company, objection was made to producing books and charters and papers in the possession of the company on the ground that the Commission had no right under the law to institute a general inquiry of this kind.

It was said that the Commission was not a grand jury, and therefore could not ask the legitimate question of a witness except in a case where there was an issue, where there were parties, complainant and defendant, and an issue that it had the jurisdiction to try. So, there we were confronted with that question, not that it would incriminate them to answer, for that had been settled, but simply that the Commission could not institute such an inquiry, could not conduct it. It is true the law said in terms that we could, but they said the law was invalid, that it was unconstitutional. So, after a course of appeal that went to the Supreme Court, by a majority of one that case was decided in favor of the power of the Commission to conduct such an investigation.

Only last year, when we were investigating, upon complaint, the anthracite-coal roads in New York, a general objection was made again to the production of books and papers, and we had to stop proceedings and go into court, and then the case was appealed to the Supreme Court. Though the circuit court decided against the Commission, the Supreme Court fully upheld the position taken by the Commission and ordered production of the documentary evidence.

Only last fall in Chicago, when we were investigating the private car line practices under a general inquiry, a witness who represented a car company was asked whether his company paid rebates or not. He refused, under advice of his lawyer, to answer. We had to suspend that branch of the case and institute a proceeding to compel him to testify. That proceeding is pending now in the circuit court.

Thus it is seen that the Commission has been steadily confronted at every step with difficulties and constitutional objections and refusals to answer, necessitating resort to courts and appeals to the highest court in the country to decide these questions. And yet the gentlemen under whose management these abuses have been committed are the gentlemen who come here and tell you that the Commission is not to be trusted because it has not enforced the law against them.

There would be no need of enforcing the law if they were to hold that their obligations under the law were first and highest and above the pecuniary interests of the companies which they represent. They say: "Well, I must pay rebates because my competitor does. I must commit an offense because my competitor commits one, or I will lose business. I will get the business by violating the law, and therefore I must violate it."

I do not know of any code of ethics or code of morals that sustains an argument of that sort with respect to any other business in the land—that I must do as somebody else does for fear he will get ahead of me, irrespective of what the law says about it. Now, I admit as a practical question the traffic man is confronted with a great difficulty when his business is being taken away by another road that violates the law. I see the force of that; it is a serious condition. But it would be far better if all of them who are affected in this way would combine to try to obey and enforce the law rather than to follow the bad example of a competitor and violate it. But what I protest against is that these gentlemen who have instituted and maintained these practices shall stand here to impugn this Commission for dereliction and failure in an effort to perform its duties under this law and to compel them to obey it.

I do not criticize the carriers for exercising their right to raise the questions that they have in these proceedings. My point is that when they stand upon their confessed violations of law they occupy a sorry position from which to discredit the Commission for failure to enforce upon them obedience to laws, especially in view of the fact that they have in every way contested the authority of the Commission to require the disclosures necessary to that end.

Now, railroad men are no worse than other men; they are no better; they are actuated by the same motives that other people are actuated by. These gentlemen who represent these corporations that are in this business for gain, confessedly so, represent the interests of the owners. They do not pretend to represent the public.

The Northern Securities matter was first investigated by the Interstate Commerce Commission under a general inquiry. It was the taking of testimony before the Commission that was a basis, a foundation, for the proceedings that were carried to the Supreme Court and resulted in the dissolution of that unlawful combination. The joint traffic agreement between the 31 railroads in the trunk-line territory a few years ago, when they had signed an agreement, was taken up by the Commission and investigated, and it was upon request of the Commission that proceedings were instituted by the Attorney-General to enjoin and break it up, and which resulted in the dissolution of that combination by injunction.

It was the investigation of the Commission only a couple of years ago in southern territory, where it was alleged that the roads carrying cotton in that section were reserving the routing to themselves and dividing the traffic—it was the investigation of the Commission and the request of the Commission that caused the institution of proceedings at Atlanta and Memphis and the breaking up of that practice. It was the general investigation of the Commission last fall which developed the practices of so-called "industrial lines" in Chicago and other places where, by securing an undue amount of the through

rate, the manufacturer for a small trackage about his works obtains an equivalent to a rebate. As a result of this investigation, some of these practices have already been abolished. It was the general investigation of the Commission that developed the abuses of kindred character in respect to the private car lines receiving allowances from the railroad and paying rebates to some shippers and not to others.

The Commission has not been idle. It has been confronted with a contest at every step it has made from the beginning by these gentlemen who impugn it and against whom it has been sought to enforce the law. A sense of justice, a feeling of self-respect, forbids the Commission to stand idly by and let it go as confessed that we have not been attempting to do anything, and that there should be no regulation as to the reasonableness of rates because the Commission has not been able to induce the very men who make the arguments to cease and desist from other violations of the law, such as hurtful and ruinous discriminations as between individuals, commodities, and places.

I have no animosity toward the railroads. The decisions of the Commission—those in which I have participated—are matters of public record. The facts upon which we have rendered decisions are printed. They are in the reports, and these cases are open to investigation. There has been no crusade against the railroads by this Commission. The crusade is the other way. The law enjoins upon the Commission the duty of making a report once a year to the Congress, including therein its recommendations for amendment of the regulating statute. It has never failed to perform that duty as it has understood it. The breaking down of this law in the effort to enforce it at different points has made it necessary for the Commission to do that, to emphasize it, and to repeat it time after time. Of course, it would be easy to remain passive, have an easy job, and draw the salary, and pay no attention to the sworn duties and obligations which rest upon the Commissioners.

But we would be unworthy of your confidence if we did that. And not having done that, every time the Commission has made a report recommending any important amendments to this law which affects the carriers, and which they do not approve of, the Commission has been attacked in various ways.

It has been asserted that we want autocratic power. Only last year the Senate called upon the Commission for certain data and information in regard to increases of rates, which it answered as soon as it could compile the testimony, and that special report became a public document. A gentleman in Chicago, Mr. Slason Thompson, who is the manager of the press bureau of a railroad organization, has put forth a criticism of that report which is longer than the document itself, and which begins with this statement:

January 13 last, presumably at the suggestion of the Interstate Commerce Commission, in furtherance of its campaign to obtain autocratic control of American railroad transportation, Senator Quarles introduced in the United States Senate and asked the present consideration of the following resolution.

There the Commission and the Senator who introduced it are most unwarrantably characterized as joining in a campaign for what? Autocratic authority for the control of all American railways. And what is the offense? The Senator introduced a resolution calling on

us for certain data and information in respect to the increase of railway rates during the last three or four years, and the effect of those increases. We made the best answer we could from the data we had, and the Senate published the document. That is the way it is handled and the way we are criticised by a representative of a large number of these carriers.

Now, I want to pass away from that, for I am here, as I said before, to repel these unjust insinuations or charges, in whatever form they have been presented, and to give to you the evidence of the activity of the Commission in its efforts to bring these concerns into obedience of the law.

Mr. H. L. Bond was before the committee a few days ago, and I saw in the newspapers, although I have not had a chance to read the corrected or revised report of his statement, that he said, in respect to what he considered the impropriety of conferring any power to fix rates upon the Commission, after naming twenty-five or thirty cases that had gone to the courts—to use his elegant language—"The Commission had hit the bull's-eye once, had struck in the ring twice, and had missed the target altogether the other 23 times," or whatever the number was. Now, I only refer to that because stated in that way it is misleading.

Out of the 35 cases that the Commission has had occasion to bring in court for the enforcement of its orders, some five or six of them were cases in which the courts enforced the orders of the Commission. In the other cases they did not. But why not? That is the material matter to which I wish to call your attention. Nearly all of these other cases in which the courts have not enforced the orders of the Commission were either where the Commission found a rate unreasonable and undertook to say what was the reasonable rate and prohibited the charging of any more than the reasonable rate, and made an order to that effect, or they were cases (of which there were a large number) under the long and short haul clause, or fourth section of the act, where the Commission announced and followed a construction of that clause to the effect that it was obligatory upon the carriers, except when they made a special case under an application to the Commission for leave to depart from the rule of that clause or section. So that as to all those cases Mr. Bond refers to them in such a way as to imply that the Commission was reversed on the merits of those cases, while as a matter of fact the Commission was reversed upon the construction or interpretation of the law in respect to the fourth section and the power to fix a maximum rate.

I am not here to criticise the ruling of the Supreme Court on these questions; but it is a fact that no railroads ever, before the interstate-commerce law was passed or since, desired or did charge more for the short haul than for the long haul except to meet competition at the longer-distance point. That was the only occasion for it. Now, it has been held that where competition does exist at the farther point and does not at the nearer point, or where greater competition does exist at the farther point than at the nearer point, that the circumstances and conditions are substantially dissimilar, and therefore that the long and short rule does not apply. However it has been brought about, that section is as much a nullity as if it had never been written.

Now, I am not criticising the court about that. There may well have been fault in framing the section, because that section is only operative where the "circumstances and conditions are similar," and right there in that phrase the difficulty has arisen. The Commission was trying to give some effect to the section; was assuming that Congress meant to correct something by the fourth section; but under the construction given to that section by the court only one of its long and short haul clause orders have been enforced. It is perfectly evident that the law might just as well have never been written as to have it mean what it now means, for it has no effect whatever.

In respect to the power to deal with the rate the Commission from its very inception construed the law to mean that when a rate was challenged and the question was tried, and upon hearing the rate complained of was found to be unreasonable, the Commission could find what was reasonable, and could prohibit the carrier from charging any more upon the apparently good reasoning, it seems to me, that any part of the excessive rate above that which is reasonable is just as unlawful as any other part. If the reasonable rate is 90 cents and the unreasonable rate is a dollar, and you have power to order the carriers to cease and desist making an unreasonable charge, why does not the same apply to any other part of the excess as well as the one hundredth cent? Why not apply it to the ninety-fifth or the ninetieth, or any other part above the reasonable rate? That is what the Commission was trying to do. That is what the Commission held from the beginning, when Judge Cooley was its chairman, and it made rates at that time, and continuously thereafter until the Supreme Court said that the power was not conferred upon the Commission by the statute.

A large number of these cases (25, I think) that Mr. Bond cites as indicating the incapacity of the Commission, so to speak, are simply cases that were overturned in the way of undertaking to enforce the law as it was construed from the beginning; and whatever may be the law now, whatever may be the rightfulness of the interpretation which the courts have placed upon it, the very situation that confronts you here to-day is a vindication of the desire of the Commission to enforce a reasonable or just rate. It is because of such interpretation that this clamor for amendment exists, so that it is not fair to array these cases here as cases in which the court upon the facts, upon the merits and equities and justice of the case, has overturned the Commission 29 or 30 times out of 35, when in reality these cases went off solely upon construction of the law, which demonstrated vital defects in this regulating statute. In the various judicial proceedings to which I have referred the Department of Justice has cooperated with the Commission and acted with commendable promptness and efficiency in the expedition and conduct of the cases.

Now, I have said about all I intended to say in respect to these matters. There are one or two general observations I want to make. It was said the other day by Mr. Staples, a member of the railway commission of Minnesota, before the Senate committee (and there is no impropriety in my alluding to it, because it appeared in the newspapers) that this Commission has had a case before it for a long time from a place called Cannon Falls, in Minnesota, involving a discrimination in rates. That is a long and short haul case. The

testimony was taken about a year ago by the Commission, and it has been set some two or three times for argument before it was finally submitted. It was either postponed on the request of the attorney representing the complainant or by his consent and the request of the other party—

Mr. STEVENS. When did the last brief come in?

Mr. CLEMENTS. The brief on behalf of the complainant was filed the 5th or 6th of this month. The Commission has had that case, then, three weeks. The delay has largely resulted from the action of counsel representing the complainant, either on his own motion for his own convenience or in conjunction with counsel representing the other side. Now, Mr. Staples never intended to indicate that this Commission was at fault; I have no idea that he did. What he was undertaking to do was to show the defective state of the law as to the long and short haul cases. That is what I believe was his intent and meaning. I think he was entirely misunderstood, and I think it is due to him and to us that this fact be stated on account of the publicity that was given to his statement.

It is continually said that it is all right to stop rebates, stop the cutting of rates, stop these disastrous and ruinous secret discriminations; all these gentlemen say that those things ought to be stopped. But then they will tell you in the next breath that such a thing as an unreasonable rate is a thing of the past; that there is no need of any law about that because there are no unreasonable rates. Well, there may not be—I am not here to try rates to-day—but what I want to say about that is this: The present law proceeds upon the idea that the shipper has a right to reasonable and just rates. If he has, there ought to be some way of ascertaining whether he has a reasonable or just rate, and to give it to him if he has not. If he has no rights in the premises, if transportation is a commodity like a horse or a hat to be sold under any terms and with any discrimination the owner pleases, then we ought to wipe out the law we have now. It has no place here, if that is the true theory. If, however, the law we now have properly declares every rate is unlawful which is not reasonable and just, and that the public is entitled to a reasonable and just rate, there ought to be some process whereby it can be ascertained and enforced.

These gentlemen say this is revolutionary, radical, reactionary. I do not know how many adjectives have been used in respect to it. It appears to me that it is just the other way, that it is a curious anomaly that where two parties have rights involved and the law provides that the question may be put in issue by complaint and answer, with a trial and investigation, that the whole matter must end finally by allowing one of the parties to decide the question. There is no affective way now in which to revise and correct a rate and put in a different one if the existing rate is unreasonable, no matter how unreasonable it may be. To say that the Commission may say that a dollar rate is unreasonable, and therefore unlawful, and make its order to that effect, subject to a trial de novo and the taking of new testimony, when all of the traffic managers can come in and give testimony as experts that the rate in question is a reasonable one, certainly seems to me an anomaly.

There is no way within a reasonable time that the matter can be

settled and the reasonable rate made effective. There has never been a time since the dawn of civilization, at least since the establishment of common law, that one of the parties in a matter in controversy is left by the conditions of the law to determine for himself what shall be the other party's right in the matter. But then we are told, in answer to that, that the interests of the carriers are so dependent upon the just interests and prosperity of their patrons that they will not kill the goose that lays the golden egg, and therefore their own selfish interests will promote the application of just rates for their patrons. This, of course, is mere evasion. In respect to no other matter do we proceed upon the idea that we can safely leave the just right of one person to be determined by the interests of the other party in the controversy.

The CHAIRMAN. Would it interrupt you if I should ask you a question there?

Mr. CLEMENTS. No, sir.

The CHAIRMAN. What is the method pursued by the Commission in ascertaining what is a reasonable rate? To what factors, what circumstances, do they look—how do they get at it?

Mr. CLEMENTS. Well, the Commission considers such testimony and facts as it may get relating to many matters, among which are the bulk of the article as compared with its weight and its value, how much space it will take up in a car as compared with its weight and its value, the length of the haul, the value of the article, the service of the carrier, and also the question of competition. In addition to that it considers what the traffic will bear. You can not put the same rate on low-grade freight as you can put on high-grade freight. For instance, you can not put the same rate on sawed logs that you can on dressed meat, which is a higher grade article. Value is necessarily an important factor.

The CHAIRMAN. Is there any mathematical method of determining it?

Mr. CLEMENTS. There is absolutely none, I think. There is no method by which you can work out to a mathematical demonstration that a particular figure is a just and reasonable rate. You can not do it, because you can not count the cost of the traffic to the carrier for its movement. There are many elements that you can not figure; they are only estimates. That is the utmost that the railroads undertake to do in considering these matters. It is one of those questions that, in my judgment, are not susceptible of any such fine measurement as the calculation of interest on a note. As with many other questions, however, we get into court where there is a controversy between persons, and the question submitted to the jury by the court is, What is reasonable under all the circumstances? Nobody can figure on it to a certainty, and nobody can prove it by any rule, but human conscience, human judgment, with comparison of all material things involved, are to be used.

Take, for instance, the matter of freight classification. Classification, to be of any benefit, must group together all of one class. The roads in some territories have six or seven classes, and in other sections eleven, and so on. Take either one of them, and when you put the eight or ten thousand articles of commerce that move into these different classes you have to group together in one class several hundred articles.

They all differ in greater or less degree—in value, in bulk, in weight, and in their susceptibility to injury from water or breakage, and all these things. It is a greater risk to haul glassware, cut glass, and things like that, than it is to haul pottery, because the loss is greater when the breakage or damage comes. The best that can be done by human ingenuity and human methods, in my judgment, or ever can be done, is a fair and reasonable approximation in respect to these things.

The CHAIRMAN. Conjecture?

Mr. CLEMENTS. It amounts to more than a conjecture, perhaps. Conjecture is not much more than a guess, I should think. There are some of these things—you see them, you know them, they are substantial elements that you must consider—but you can not measure them.

The CHAIRMAN. Is it always proper in fixing a rate to ascertain, if possible, whether it will be remunerative to some degree?

Mr. CLEMENTS. That is what we have always thought was necessary, to find that the traffic paid something more than the cost of moving. Otherwise it would be carried at a loss, which loss would have to fall upon some other traffic and would be an unjust discrimination. So we have always regarded it as a wholly unjustifiable thing for a carrier to carry at a loss. It can not be done without injustice to some other traffic.

The CHAIRMAN. Well, there would be a difference, I suppose, between carrying at a loss and carrying at a remunerative rate?

Mr. CLEMENTS. Yes. The carriers as a rule say that they had better carry a thing that will pay the cost of movement and something more rather than not to carry it at all, although it does not pay enough to support the cost of the movement and pay its proportion toward the fixed charges and expenses of the plant. And undoubtedly there are many things that do move at less than a remunerative rate, if you take into account the fair proportion which that traffic should bear of all the expenses of maintaining the road and operating it, and paying fixed charges. There is no doubt about that. If that were not so there are a great many cheap and heavy articles that would not move at all. The carriers think that it is to their interest to move those at something above the cost of movement, and that it has tended to build up industries, has created industries; that it has pleased the public, and it is entirely defensible so far as I can see. It helps to develop the country and develop industries, and inures to the benefit of the public and to the railroads, although they do it at less than they might reasonably charge if they were undertaking to make this traffic bear its proportion of all expenses.

Mr. BURKE. May I ask you one question there?

Mr. CLEMENTS. Certainly.

Mr. BURKE. If I understand you correctly, in determining a rate you do not consider to any great extent the cost of the service?

Mr. CLEMENTS. Well, it can not be considered for the reason that it is not ascertainable; but, of course, that is looked to as far as it can be considered.

Mr. BURKE. If I understand you correctly, the Commission, in determining a reasonable rate, does it in exactly the same way and on the same basis that the railroads say they do it?

Mr. CLEMENTS. That is my understanding. We consider all the things which they consider. I do not think there is any difference between us about that. They sometimes insist upon giving more effect to competition than we do at some points, and also use competition for a justification for some other things they do. We differ about that. But so far as the basis of considering these things is concerned, it is the same, whether it is by the Commission or by the railroads.

Some other statements have been made here by some very reputable and worthy gentlemen in respect to the settlement of cases, to the effect that upon a certain small per cent of the complaints, formal and informal, that have come to the Commission the Commission has made orders, and of that per cent a certain proportion of the orders made by the Commission have been obeyed by the carriers, while, as to the remainder, some few suits have been brought to enforce them. I do not know where they obtained their figures. Certainly we have made no official statement of that kind. They may be correct, however, for the time they cover. These informal complaints consist of letters complaining of a rate, or an overcharge, or this or that; sometimes it is an alleged discrimination, or a burdensome rule, or a rate, or an overcharge. The Commission handles them in this way:

It is not a complaint that you can serve and the carrier can answer formally as the basis for a trial; but in order to avoid unnecessary suits, delay, and expense we make a memorandum upon it in the office from the rate sheets on file, so as to show what they indicate about the matter, and we send that to the railroads complained against (just as a letter), asking them to deal with it and let us know about it, and if there is anything wrong to correct it. They answer, and a great many of those informal complaints are disposed of in that way. If they have charged, by mistake, \$5 more than the published rate would warrant and you can show it to them, they invariably pay it, and pay it promptly, and that is the end of it. There are complaints of that sort all the time, varying from 25 cents to \$200, on these things, and much more than that in some cases. These are called the informal complaints.

The complaint is often about a rate or about a discrimination in rates. These are submitted in the same way for the correction of any injustice and with a request for information. If it is an overcharge and it is settled, that is the end of it. If it is a rate that is involved and the carrier does not see proper to change it, its reasons why it declines to do so are stated, and then the matter is submitted to the complainant. If he wants to file a complaint he does it. Otherwise it is dropped. Very frequently it is dropped.

Now, I suspect in these figures that have been used here all those cases where the matter has been dropped are classified as adjusted or settled. There has been no settlement. The shipper has abandoned the case because he found he had to make a formal complaint, at the end of which he could do no more than get an order that the carrier cease from charging that rate. There is no adjustment there. In those cases where overcharges have been claimed and obtained, they have been settled; they are adjusted, as I say, informally and satisfactorily. That is an adjustment, to be sure, but it is simply paying back what the carrier admits he took over and above his own published rate. It is not the adjustment of a rate; it is the payment of

that which the carrier took in excess by mistake over the freight he was entitled to take.

As I say, these figures are misleading, and because of these various elements they do not mean just what it has been sought to make them mean.

The Senate has sent to the Commission a request for information in regard to these matters and we are undertaking to compile it. There will be a statement of all these matters which will show their exact status and the disposition of them as soon as it can be prepared.

The CHAIRMAN. If you please, I think the committee would like to have you explain the method pursued by the Commission with reference to a complaint; what is the process?

Mr. CLEMENTS. You mean a formal complaint?

The CHAIRMAN. Yes; what is done?

Mr. CLEMENTS. Well, the complainant makes out and alleges as he would in a petition or a bill in court, setting forth what he complains of and against what carrier. They frequently do not say that the carrier is engaged in interstate commerce; they may say the rate is from "Atlanta to New York," or something like that, and omit to state the roads that make up the actual physical line. It then becomes necessary for the Commission, in order to avoid delay, amendments, and things of that kind, to send the petition back, indicating what should be inserted.

For instance, to give the Commission jurisdiction it must be said that they are engaged in interstate commerce, and the roads must be stated, the technical names of the roads, the names under which they are chartered, and so on. Well, when that is done, it is signed by the complainant and sent to the Commission. It is then filed, copied, and a copy is mailed by registered letter to each carrier complained of, together with a notice from the Commission that the carrier shall file answer within twenty days or some other period of time. Twenty days is usually the time. When it is on the Pacific coast we give a longer time. When it is near by, if it is urgent, if it is a matter of perishable fruit in the spring, or something of that kind, and it seems necessary that whatever is done must be done in a short time, we fix a less time. The law only says reasonable notice. So we are governed by circumstances, distance, etc. The carrier answers within the time or asks for further time, and then answers. Then as soon as the Commission can find a time when it can set the case for a hearing it does it, and notifies the parties that the case will be heard at Chicago or Atlanta, or wherever the place is, at such a time. The Commission goes there and sits down with a stenographer and takes the testimony. That is written out by the stenographers, typewritten, furnished free to each side, and then after argument, oral or written, or both, it is submitted to the Commission.

Mr. BURKE. Does the whole Commission attend that meeting?

Mr. CLEMENTS. As near as possible; it is not always possible to do so. We have a good many cases sometimes, so that we have to divide up. In an important case we try to have as many as three of the Commissioners present, or all of them if possible. But in a number of cases one Commissioner goes and takes the testimony, and after it is written out it is submitted to the whole Commission. There is no way to deal with all the cases except in some such way. Sometimes

the testimony is taken by deposition, for which the law provides. The parties, on notice to each other, may do that.

The CHAIRMAN. Is it necessary for the complainant to appear by counsel?

Mr. CLEMENTS. No, sir; that is not required.

The CHAIRMAN. Are the expenses of witnesses paid?

Mr. CLEMENTS. We print on the subpoena that each party will pay his own witnesses, so as to avoid as far as possible the payment out of the public money of any witness fees. And in all civil cases that is adhered to. Sometimes, when we have an investigation that relates to these secret rebates and things of that kind, and a witness is not willing to come, we issue a subpoena and pay him.

The CHAIRMAN. Would you pay the expenses of an indigent complainant?

Mr. CLEMENTS. The witness fees; you mean the witness fees?

The CHAIRMAN. A man who is unable to pay.

Mr. CLEMENTS. I do not know if we ever have done that. I do not know if a case of that sort was presented whether we would feel authorized to do that or not. I am sure it has never been done. We try to avoid that by setting these cases as near to the complainant as possible. They may be heard, all of them may be heard, in Washington under the law; but we long since found that that amounts to a denial of any hearing at all, because where there is a large number of witnesses to come these distances and pay their hotel bills and so forth they could not afford to do it. Consequently, we set these cases as near as possible to the residence of the complainant.

We have found no difficulty in getting witnesses in that way. The railroads do not complain of that, because it is about as easy for them to go one place as to another. They are men who are generally traveling anyhow, and they do not find any hardship in that. Sometimes they prefer to go to a place where there is a good hotel rather than to a place where there is not a good hotel, but they do not make any protest. They go wherever the case is set.

Now, I have about concluded what I wanted to say. In respect to the importance of this question I have some figures here, made a few days ago, which do not show that there are unreasonable rates, but they do, to my mind, show that this is a very important question and one which ought to be controlled in some tangible way by law. Upon a total mileage of 187,000 miles of railway for the year ending June 30, 1899, the carriers reporting to the Commission earned in gross \$1,313,000,000, in round figures. Upon a mileage of about 209,000 miles in the year ending June 30, 1904, they earned, gross, \$1,966,000,000, showing an increase for the last year named over the first one of \$653,000,000. This increase exceeds the entire receipts of the Government of the United States for the last fiscal year from all sources. The increase of net earnings for the last year mentioned as compared with the first year mentioned, five years previous, is \$177,000,000.

The gross earnings per mile of line for the first year named were \$7,005 per mile; for the last year named it was \$9,410. The net earnings of line per mile for the first year were \$2,433, and for the last year \$3,055.

Mr. TOWNSEND. In determining the net earnings of the road, is the Commission in a position to know whether a proper proportion has been assigned to operating expenses?

Mr. CLEMENTS. Well, the Commission has been endeavoring with its utmost ability, under the help of Professor Adams, our chief statistician, to get on a uniform basis, so that all reports would be alike and would make a fair showing as between operating expenses and permanent improvements, and so on. I can not say that it is perfect yet, but these figures I have read are made and reported by the carriers.

Mr. STEVENS. This is a question that I have been requested to ask you. In considering the wrongs under the long-and-short-haul clause—section 4, as I remember—between localities, has there been any attempt by the Commission to remedy any such wrongs as might be caused by long-and-short-haul conditions under the third section of the act—discriminations?

Mr. CLEMENTS. Yes.

Mr. STEVENS. In what way and what have you done?

Mr. CLEMENTS. Well, in the Chattanooga case, which was a long-and-short-haul case originally, after it got into court, before it reached a decision in the circuit court the Supreme Court had made its decision construing the fourth section. The Chattanooga case had been decided under our construction of the fourth section as originally announced, but the Supreme Court overturned that before the Chattanooga case reached trial in the circuit court. Judge Severance held in that case that the third section would apply if the fourth did not. There was new testimony in the court bringing the case down to the time it was tried over again in that court. The judge said further that while there might be a greater charge for a short haul than for a long haul, it ought not to be out of proportion to the difference in circumstances and conditions; that it ought to be measured by them and not more. That case came to the Supreme Court and it was reversed.

The CHAIRMAN. In your judgment, Judge, would it be practical or just to strike out from the fourth section the language "under similar conditions and circumstances?"

Mr. CLEMENTS. Well, of course it is a difficult matter to answer in a satisfactory way what would be the effect of that in all cases. But there is much hardship and friction growing out of the present condition, and I believe that the evils and hardships, if those words were stricken out, would be much fewer than now. The public on the whole would be greatly benefited.

Mr. RYAN. Is it not a fact that in nearly all of the important cases before your Commission the shippers have been represented by counsel, all of the important ones?

Mr. CLEMENTS. Yes; that is true.

Mr. STEVENS. On what point was that case decided on the third section—that Chattanooga case?

Mr. CLEMENTS. That case involved the rates to Chattanooga, as compared with the rates to Nashville by the eastern gateway—that is, by the Southern Railway from Baltimore and New York, and so on around to Nashville through Chattanooga, so that Chattanooga was the near point. Now, the Louisville and Nashville Railroad

from across the Ohio also reaches Nashville. It had put in certain rates there for reasons of its own—rates to Nashville—which had to be met by the roads carrying by the eastern lines, or nearly met, in order to get part of the business by that route from the east, but in doing that they did not want to reduce their Chattanooga rates to the level of the Nashville rates. The Supreme Court appears to have held in that case, if I understand it, and I am simply speaking from memory, that that rate having been fixed at Nashville by the Louisville and Nashville road, the roads reaching Nashville from other territory and by another route were at liberty to meet that competition as they found it and without respect to what they charged to Chattanooga, provided, of course, the Chattanooga rate itself was not in and of itself unreasonable, which would be an independent question.

Mr. ADAMSON. As to whether circumstances and conditions are similar or not is a question of fact, is it not?

Mr. CLEMENTS. Undoubtedly.

Mr. ADAMSON. Do you not think the law ought to leave questions of fact with the Commission, and have reviewing courts to confine themselves to the law entirely?

Mr. CLEMENTS. Well, as I said a while ago, I did not come here to discuss these bills particularly, and I did not want to indulge in any discussion of that on my own motion, because my chief purpose here was simply, out of self-respect, to show these insinuations or accusations against the Commission to be unjust and unfair and at variance with the record and history of the Commission.

Mr. ADAMSON. Has not new evidence been heard by the circuit court in almost every case in which you have been reversed?

Mr. CLEMENTS. I guess every one of them; I do not think there has been an exception. They always try the case over again after it leaves the Commission.

Mr. ADAMSON. Suppose in case parties have discovered new evidence, and are entitled to a hearing on it, the law should require a further hearing before the Commission, and then let the appeal go on to the court upon the law, do you not think the working would be more satisfactory and fairer to the Commission and to the parties?

Mr. CLEMENTS. I have never been able to see how the Congress can confer upon the court the power to make a rate for the future, since the Supreme Court has decided that that act is a legislative act, and I do not understand that under the Constitution a judicial tribunal can legislate. As the Supreme Court has decided that this is a legislative act directly, I suppose it can only be exercised by Congress or some body other than a court authorized by Congress.

Mr. ADAMSON. When courts of equity want the help of a master and send a case back time after time to the master to take additional testimony, they allow the master to pass on it every time, do they not?

Mr. CLEMENTS. I understand that to be the practice.

Mr. LAMAR. I would like to ask you one question, if I may.

Mr. CLEMENTS. Certainly.

Mr. LAMAR. Is there any recommendation of the President in his message substantially or exactly the same as the request made by your Commission for years as to giving power to enforce a rate when it is declared reasonable? Take the message of the President. He recommends, as I understand it, that the Commission be given the power

to decide on a reasonable rate, and that when a rate is so declared to be reasonable that it shall go into effect at once.

Mr. CLEMENTS. Yes, sir.

Mr. LAMAR. What does that "at once" mean?

Mr. CLEMENTS. I suppose that means, as I understand it, as soon as the carrier could be notified and would have opportunity to print his tariff in such a way as to conform to it.

Mr. LAMAR. Has this bill given that power? [Reading.]

And it is hereby authorized to perform that duty, to declare at the same time what would be a fair, just, and reasonable rate or regulation or practice in lieu of the rate, regulation, or practice declared unreasonable, and the new rate, regulation, or practice so declared shall become operative twenty days after notice.

Does that give the power to fix that rate at once—to go into effect at once?

Mr. CLEMENTS. It seems to me it would from your reading of it.

The CHAIRMAN. If the Commission was given the power referred to in that last query should its exercise of that power be subject to any judicial review, in your judgment?

Mr. CLEMENTS. I do not see any reason why it should not be to any judicial review that is possible to be had under constitutional and legal methods. The Commission has never asked for the power to make a final rate independent of anything of that sort; but, at the same time, I have in late years, and particularly since the decision of the Supreme Court in the minimum-rate case, as it is called, had very great doubt as to whether the courts will ever apply their judicial authority to the question of making a rate—that is, saying whether it shall be 90 cents or 95 cents—or that they will do any more than decide whether or not it is or is not lawful.

The CHAIRMAN. Reasonable?

Mr. CLEMENTS. Yes, sir.

The CHAIRMAN. You think they have that power?

Mr. CLEMENTS. Yes; I should think that would be included—the judicial question.

The CHAIRMAN. And it is your opinion that the Commission should take that away from the courts?

Mr. CLEMENTS. I do not believe it can, if the Constitution gives protection to the property of everybody, theoretically at least, and the doors of the courts are open all the time to restrain an order by this Commission, or any State commission, which intrenches upon the constitutional rights of property involved in these cases.

Mr. ADAMSON. If the section read by Mr. Lamar were enacted into law, leaving both the courts open as now for the railroads to interfere with your proceedings, and also the statutory proceedings for you to go into court on your judgment, you think there is no necessity for further legislation as to procedure—you think we could get along?

Mr. CLEMENTS. That would probably cure that particular thing. Of course there are a good many other things that could improve the law, but I do not care to go into them.

Mr. ADAMSON. Are not there sufficient avenues open—

Mr. CLEMENTS. It seems to me so.

Mr. ADAMSON (continuing). If we can get this section Mr. Lamar read to you?

Mr. CLEMENTS. It seems to me so, if there was some way to have that obeyed. To say that such a rate is a lawful rate is one thing, and to have it conformed to is another thing.

Mr. ADAMSON. I want to ask you about another bill. I believe you have read the bill I introduced early in the Fifty-eighth Congress.

Mr. CLEMENTS. Yes; some time ago.

Mr. ADAMSON. I would like to ask you whether it is your recollection that that embodied all the recommendations, substantially, that the Commission made for amendment to the law?

Mr. CLEMENTS. It embodied as many as were concurred in by the Commissioners, I think. Of course there are five of us, and we do not all agree.

Mr. LAMAR. One other question, Judge, and I am through. Upon the question of capitalization I asked Mr. Bird a question, and I would like to ask you substantially the same thing. Leaving out all question of contest among carriers for freight, and leaving out all question of a particular rate as being unreasonable, and taking the whole tariff sheets of the railroads of the United States, must they not bear a direct relation to the capital invested in those properties?

Mr. CLEMENTS. I think so. The Supreme Court has indicated that.

Mr. LAMAR. The Supreme Court has said that in the Nebraska case. If that be true, and the Supreme Court has gone to the extent of saying that they can not earn compensation upon fictitious capital—

Mr. CLEMENTS. Yes.

Mr. LAMAR. Now, has your Commission ever inquired into the question of how much fictitious capital exists in all the railroads of the United States?

Mr. CLEMENTS. It has never made any exhaustive examination of that matter that would be at all satisfactory.

Mr. LAMAR. As I understand it, the public generally has a belief, whether it be true or not—and it is a pity that that matter has not been investigated—that a large proportion of the capital of American railways is fictitious. If that be true it disposes of the argument of the railway men that railroad rates are reasonable, because if they are confiscatory they are unreasonable and extortionate. So that is an important question. The Supreme Court has said that as the basis of overthrowing a schedule of rates.

Mr. CLEMENTS. It is a very important question and a very large one.

Mr. LAMAR. It is such a vital question I am surprised that no statistics exist in the United States to challenge the fictitious capital—wind and water, as it is called popularly—in railways, for the simple fact that if that fact were proven it would be conclusive proof to the American mind that the present rates are unreasonable. Taking their own assertion that the present railroad rates are reasonable, it overthrows their statement at once, because it would be patent that they were earning dividends on capital not invested, and the Supreme Court says they can not do that.

Mr. MANN. What is the average rate of dividends now on all the capital stock of the railways of the United States, par value?

Mr. CLEMENTS. I have not those figures with me, Mr. Mann.

Mr. MANN. I suppose it would depend on what the present rates are whether it would show what Mr. Lamar suggests?

Mr. LAMAR. Does not the Industrial Commission in its general conclusions—I ask for information, I am not quite sure about it—say that everything is conjecture—and I believe there is a great deal of conjecture about all these questions—but being permitted to have their guess, have they not guessed that a large percentage of capital in the railways of America is fictitious?

Mr. CLEMENTS. I believe so.

Mr. MANN. The market value of the capital stock will demonstrate that fact, that it is either fictitious or worthless.

Mr. CLEMENTS. Yes; some of it is not worth much.

Mr. BURKE. I understand you to say that discriminations by reason of a secret rate or cut rate or rebate have practically ceased?

Mr. CLEMENTS. As compared with what was going on three or four or five years ago, yes. I do not mean to say in this vast country, with all its great variety of commercial interests and industries, that there is not some of that going on, and probably there always will be, but it has been very greatly diminished.

Mr. BURKE. I believe you stated that certain proceedings were instituted in the way of injunction proceedings under the Elkins law.

Mr. CLEMENTS. Yes.

Mr. BURKE. Is your legislation adequate and sufficient on that point?

Mr. CLEMENTS. Well, we have several cases pending now under the Elkins law, and it is a little too early to say it will be sufficient in all respects, because it has not been tested, as we have had to test these former laws, by judicial procedure.

Mr. BURKE. Have you any reason to think at this time that it is not adequate?

Mr. CLEMENTS. I have no suggestions to make in the way of further legislation to cover what are known as secret rebates, cut rates, and so on, which are covered mainly by the Elkins bill; but among other things one important thing is to practically prohibit and effectually stop certain abuses in respect to these terminal railways and car lines. For instance, an industrial plant that was a manufacturer and was running for no other purpose some few years ago has had switches put in and has incorporated as a railroad, and then it asked of the real railroad a division of the rates. Competition between carriers leads to that.

The CHAIRMAN. Is it your opinion that the present legislation gives power to the Commission and the courts to remedy those evils?

Mr. CLEMENTS. There is some difference of opinion among us about that.

The CHAIRMAN. I am asking your opinion.

Mr. CLEMENTS. It is stoutly denied by the car-line owners, and by the railroads, too, that use those car lines, that the Commission can pass upon the reasonableness of a refrigerator charge, an icing charge made in connection with the transportation of fruits and vegetables coming from California and other points to the eastern market. A great many of those railroads now have exclusive contracts with these car companies that the refrigerator cars of the companies shall be handled exclusively by railroad companies. The railroads do not publish the schedules for the icing service—

The **CHAIRMAN**. I was asking you particularly with regard to the two instances that you gave where a fictitious railroad is created for the purpose of a joint rate and where an extravagant mileage is paid.

Mr. CLEMENTS. I do not see why that can not be found upon the facts to be a rebate, where it is excessive.

The **CHAIRMAN**. Then, in your judgment, the present legislation is sufficient to remedy those evils?

Mr. CLEMENTS. That is what I think, although that is an untried question. We have some matters of that kind now pending.

The **CHAIRMAN**. I am asking your opinion.

Mr. TOWNSEND. The question was asked you a little while ago in regard to the courts reviewing the unreasonableness of a rate. I notice in all the bills it is provided that the court may pass upon the reasonableness and lawfulness of the rate. What is the distinction between those two terms; or, to put it in other words, what is there in "reasonableness" that is not covered by "lawfulness" that would be reviewable by the courts?

Mr. CLEMENTS. I do not know yet what the law is about it. I do not suppose there is anybody here who can say for a certainty. Suppose the law was that the Commission could, upon inquiry, fix a reasonable rate, which would be the lawful rate without appeal, with no review, and that would be the end of the law according to its terms.

Now, the railroad could nevertheless go into the courts, without any further provision of law, under the Constitution of the United States, and attack that rate as confiscatory just as if Congress had said that should be the rate, or a State commission or State legislature should say it, as they have done in various cases. Suppose it is claimed by the carrier that it is unreasonable because it does not allow a fair compensation, and, therefore, to that extent is confiscatory, because it intrenches upon the right of the carrier to make a reasonable return upon the actual capital invested. Now, will the court hold that that is an unlawful rate because it is unreasonably low and yet that there is some profit, but not enough? I confess I do not know—

Mr. TOWNSEND. Does not unlawfulness cover all the ground that you hope to cover there, without the word "unreasonable?"

Mr. CLEMENTS. I think it does; that is my judgment about it. I hardly think a court would hold a rate to be lawful that was unreasonable. It is because it is unreasonable that the law allows the court and the Commission to condemn a rate made by the carriers, and if it is unreasonable to the carrier I suppose the courts would apply the same rule—

The **CHAIRMAN**. Might not a rate be unreasonably low, fixed by the company itself, and yet be lawful so far as those parties were concerned?

Mr. CLEMENTS. I presume so; I have never thought otherwise.

The **CHAIRMAN**. And yet be unreasonable and unlawful so far as other parties were concerned—its discriminating between localities?

Mr. CLEMENTS. That is what this law proceeds upon now, that there may be discriminations of that sort; and by having one rate unreasonably low and another one unreasonably high, or even reason-

ably high, the difference is so great that it allows one shipper to overreach his competitor. That is what I understand to be undue and unreasonable discrimination.

The CHAIRMAN. If the high rate was reasonable in the case of localities, then the remedy would be to raise the lower rate, would it?

Mr. CLEMENTS. If the higher rate was reasonable?

The CHAIRMAN. If the higher rate was reasonable and the other rate unreasonably low, creating a discrimination between localities, would that furnish a case for the intervention of the Commission and the raising of the lower rate?

Mr. CLEMENTS. Well, we do not understand that under the law we can do that. We have said repeatedly in these cases where we thought that was the case that we condemned the discrimination, found that unreasonable and wrong, and ordered them to cease and desist from that, and admitted that they could cure that by raising the lower rate.

The CHAIRMAN. I am speaking now of localities that were not served by the same carrier.

Mr. CLEMENTS. Oh!

The CHAIRMAN. Where the discrimination is between localities.

Mr. CLEMENTS. As between places served by the same carrier?

The CHAIRMAN. No; by other carriers; and the higher rate is conceded to be a reasonable rate and the lower rate unreasonably low. Now, in order to remedy that discrimination would you raise the lower rate?

Mr. CLEMENTS. That is a new question. Of course no such question as that can be raised in the law we now have, as I understand it. The present law deals with the carriers. You can not make one carrier change its rates because of what some other independent carrier is doing, whether it is a high or low rate.

The CHAIRMAN. Then questions of discrimination of that kind between localities are not within the jurisdiction of the Commission?

Mr. CLEMENTS. Not unless the discrimination is by the same carrier.

The CHAIRMAN. In your judgment, do you think discriminations of the kind I have spoken of ought to be within the jurisdiction of the Commission?

Mr. CLEMENTS. That is a pretty broad question, and I would hesitate to say that they ought to be.

The CHAIRMAN. You think that they ought not to be?

Mr. CLEMENTS. I am not prepared to say that they ought to be.

The CHAIRMAN. Is it not true that the Commission has frequently assumed jurisdiction of discriminations of that kind?

Mr. CLEMENTS. By different carriers?

The CHAIRMAN. Yes, sir.

Mr. CLEMENTS. No, sir; I do not understand so. We have investigated the condition of rates by all carriers between certain points frequently, but not with the view of making the roads parties and issuing an order against a particular carrier or several carriers on account of rates that other and independent carriers have made; we have not done that.

The CHAIRMAN. The Eau Claire case, you do not think, involved that question?

wheat from Ritzville, Wash., to Portland, Oreg., which was 32½ cents. The Commission ordered it reduced to 20 cents. The railroad company reduced it to 21½ cents, making a very large reduction to be sure, but not such reduction as was required by the Commission.

In another case, the Cordele Machine Shop against the Louisville and Nashville Railroad Company and others, decided October 19, 1895, in the transportation of pig iron from Birmingham, Ala., to Cordele, Ga., the rate being \$3.84 per ton, the Commission ordered a maximum rate of \$1.80 per ton. The carrier reduced it to \$3.69 per ton—that is, reduced it 15 cents when it was required by the Commission to reduce it \$2.04. In the case of the Georgia Peach Growers' Association against the Atlantic Coast Line Railroad et al., in a case decided June 4, 1904, the rate on peaches was \$80 per car, and the rate ordered by the Commission was \$50 a car. The rate made by the railroad after the order was \$65 per car. I will file a copy of these orders and changes in the rates after the order, showing how carriers have only partially complied with orders of the Commission.

The CHAIRMAN. Do you understand that there are many other cases?

Mr. BACON. The list which I have comprises six cases, which are presented as examples of the action of carriers in complying only to a partial extent with orders of the Commission.

Table showing a few examples of how carriers have only partly complied with orders of the Commission.

Title of case.	Date of decision.	Places involved.	Commodities.	Rate at date of order.	Maximum rate ordered.	Change made after order.
Re Food Products.	June 7, 1890	Missouri River points to East St. Louis.	Wheat, per 100 pounds.	\$0.17½	\$0.14	\$0.15
			Corn, per 100 pounds.	.15	.12	.12
			Flour, per 100 pounds.	.17½	.14	.15
Tecumseh Celery Co. v. C. J. and M. R. Co. et al.	June 15, 1893	Tecumseh, Mich., to Kansas City, Mo.	Celery, per 100 pounds.	Class 3	Both to be charged s a m e rate.	Class 3.
			Other vegetables, per 100 pounds.	Class C		Class 5.
Newland et al v. N. P. R. Co. et al.	Mar. 21, 1894	Ritzville, Wash., to Portland, Oreg.	Wheat, per 100 pounds.	.32½	.20	.21½
Cordele Machine Shop v. L. and N. R. Co. et al	Oct. 19, 1895	Birmingham, Ala., to Cordele, Ga.	Pig iron, per ton.	3.84	1.80	3.69
Ga. Peach Growers' Assn. v. A. C. L. R. Co. et al.	June 4, 1904	Boston to New York as part of through shipment from Georgia points.	Peaches, per car.	80.00	50.00	65.00
Denison L. and P Co. v. M. K. and T. R. Co.	June 25, 1904	South McAlester, Ind. T., to Denison, Tex.	Coal, per ton.	1.90	1.25	1.50

The foregoing cases are taken from the reports of the Interstate Commerce Commission.

I wish to allude to the statements which have been made in regard to advances and reductions in rates resulting from changes in classifications, which have been represented to the committee as having been nearly as great in the number of reductions as in the number of advances. A gentleman on the stand this morning, if I under-

terminal rates to Pacific coast cities, and substitute therefor a system of rates based on distance or mileage, ignoring water competition; and

Whereas the assistance rendered the manufacturers, wholesalers, and jobbers of the Pacific coast by the transcontinental railroads in combatting said effort to establish rates based on distance or mileage satisfies us that the interests of the coast will be best served by leaving the authority to make rates where it now is, in the hands of the carriers, who are familiar with the exceptional conditions on the Pacific coast and the Northwest, subject to review by the Interstate Commerce Commission upon complaint of the shipper who feels that a given rate is wrong: Now therefore be it

Resolved, That the Manufacturers and Producers' Association of California while expressing the highest respect for and confidence in, personally and collectively, the members of the Interstate Commerce Commission, respectfully protest against any legislation whereby said Commission would be given the arbitrary right to make rates as inexpedient and not to the advantage of business interests of this community, and that we recommend in lieu thereof that the Commission be increased to seven members and that in view of the vast commercial interests involved and the differences governing transportation of the Pacific coast and in the Northwest that the two new members thus added to the Commission should be appointed one from the Pacific coast and one from the Northwest, so that all geographical sections of the country would be represented; and be it further

Resolved, That the law under which the Commission is at present operating is, in our judgment, a proper one if proper measures are taken to expedite the hearing of cases upon appeal, which would contemplate the establishment of a court of transportation, whose decision would be final except in cases where the constitutionality of the decree was questioned.

MANUFACTURERS AND PRODUCERS' ASSOCIATION OF CALIFORNIA.

A. SHARBBO, *President*.

E. GOODWIN, *Secretary*.

ADDITIONAL STATEMENT OF MR. E. P. BACON.

MR. BACON. Mr. Chairman and gentlemen of the committee, I wish to thank you for having accorded me a little further time to conclude the remarks which I commenced this morning and to say that it is highly appreciated.

In line with what I was stating this morning I have an additional paper to submit in relation to a question that I was asked when I was on the stand some weeks ago as to whether a carrier, in case of the Commission ordering a change in rates, would make a slight change instead of complying fully with the order of the Commission. I have a statement of a few cases of that kind which I will not read, but will file; but I will hastily refer to one or two instances. One is a case against the C. J. M. and R. Railway Company and others, decided June 15, 1893, involving rates from Tecumseh, Mich., to Kansas City, Mo., on celery and other vegetables which had been placed, respectively, in class 3 and class C. Class 3 is one of the numbered classes, of which there are six, and class C is one of the lettered classes, of which there are five, showing a difference of six classes in the classification of the respective articles. The order of the Commission was that both should be charged at the same rate, or, in other words, classified in the same class. The action of the carrier was to keep celery in class 3 and put other vegetables in class 5.

Another case is Newland and others against the Northern Pacific Railroad Company, decided March 21, 1894, involving the rate on

reg., which was 32½ cents. The railroad com-
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	Rate at date of order.	Maximum rate ord- ered.	Change made after or- der.
es.			
er	\$0.17½	\$0.14	\$0.15
is.	.15	.12	.12
is.	.17½	.14	.15
er.			
Class 3	Both to be charged s a m e rate.		Class 3.
Class C			Class 5.
	.32½	.20	.21½
	3.84	1.80	3.00
	80.00	50.00	65.00
	1.00	1.25	1.50

merce Commission.

made in regard
changes in class-
committee as having
as in the number
morning, if I unde-

stood him, correctly, stated that the reductions had exceeded the advances.

The CHAIRMAN. He said in his territory.

Mr. BACON. Yes; in his territory. The southern territory. In this document, Senate Document No. 257, second session of the Fifty-eighth Congress, being a report from the Interstate Commerce Commission to the Senate in response to a Senate inquiry in regard to changes in rates and classifications in March last, it is stated that the principal advances in classification in what is called official-classification territory, which covers the territory east of the Mississippi and north of the Ohio and Potomac rivers, with the exception of the State of Wisconsin and the northwest corner of the State of Illinois—a line drawn from Chicago to St. Louis limits it on the west—the number of advances in that territory on January 1, 1900, was 572. That was the number of advances in classification from a lower to a higher class. The number of reductions was 6. That was the number reduced from a higher to a lower class. In March, 1900, however, most of the articles (289 out of 572) which had been changed from the fourth to the third class were modified by the carriers to a reduction of 20 per cent below third-class rates, which brought them about midway between those two classes as to rates; and most articles that were advanced from the third to the second class, of which there were 155, were changed to 15 per cent below second class, bringing them to about halfway between second and third. That was a modification made in the advances which I have mentioned, which was conceded on the urgent demand of a large number of commercial organizations.

The number of advances in classification in southern territory between February 1, 1900, and November 10, 1900, was 531. They made several revisions of their classification during that period, and the total number of articles advanced in classification during that time was 531. The number of reductions during the same time was 105. The number of advances in classification in western territory, which comprises the entire territory between the Mississippi River and the Pacific coast, made January 5, 1900, was 240, and the number of reductions was 17. This is compiled from the statement made by the Interstate Commerce Commission to the Senate in reply to its resolution of inquiry. I will file this Senate Document No. 257:

INTERSTATE COMMERCE COMMISSION,
Washington, April 7, 1904.

SIR: The Interstate Commerce Commission herewith respectfully submits the following report in compliance with the resolution of the Senate of the United States, adopted March 11, 1904, which reads:

"Resolved, That the Interstate Commerce Commission is hereby directed to furnish the Senate, as speedily as may be practicable, a report showing the principal changes in railway tariff rates, whether resulting from the adoption of new rates or the amendment of freight classifications, and an estimate of the effect of such changes upon the gross and net revenues of railway corporations in the United States during each of the fiscal years ending June thirtieth, nineteen hundred, nineteen hundred and one, nineteen hundred and two, and nineteen hundred and three, as compared with the gross and net revenue that would have been derived by them under the rates and freight classifications in force during the fiscal year ending June thirtieth, eighteen hundred and ninety-nine; and also report the changes in cost of operation and maintenance of said railways for said years."

A statement prepared by the auditor of the Commission shows the principal changes in rates caused by changes in freight classification and the advances in

rates on a number of specified commodities. Most of these changes took place during the year 1900, but some commodity rate changes occurred between that year and the end of 1903. For the reasons indicated in the statement no more specific or comprehensive account of rate charges can be given.

The resolution directs the Commission to furnish an estimate of the effect of such changes in rates upon the gross and net revenues of railway corporations in the United States during each of the fiscal years ending June 30, 1900, 1901, 1902, and 1903, basing the comparisons upon the gross and net revenues they would have derived in those years under rates in force during the fiscal year ending June 30, 1899. As far as practicable the statement of the auditor is in conformity with such requirement, and following this statement is a table showing, for each of the years mentioned, what the gross revenue of the railways would have been if the average rate per ton received by all the railways in the fiscal year 1899 had been applied to the tonnage carried over such railways in the succeeding fiscal years to and including 1903. As to a few staple commodities the increase in revenue due to advanced rates in effect during specified periods is estimated in the statement mentioned substantially in accordance with the method of calculation directed in the resolution.

No similar calculation can be made respecting net revenue for the reason that the net revenue of a railway depends not merely upon gross earnings, but also upon cost of operation, which may be varied by numerous conditions, including the density of traffic as well as the aggregate tonnage.

From what has been stated it must appear that no accurate or even approximate estimate of the actual effect of specific changes in rates upon the revenues of the carrier can be made. The best that can be done is to indicate the rate changes, and then, without using them as factors, show by yearly tonnage and earnings and the average rate per ton for the year 1899 results similar in character to those called for by the resolution. This method of computation is not without value as indicating enormous additions in recent years to the cost of railway transportation to the people of the United States.

The statement and table above mentioned constitute Part I of the appendix hereto.

The resolution also directs the Commission to report the changes in cost of operation and maintenance of United States railways for the years therein mentioned. Except for the fiscal year ending June 30, 1903, this information is contained in a table prepared by the statistician of the Commission, which will be found herewith as Part II of the appendix. The returns for the fiscal year 1903 have not yet been compiled, and the figures relating to the cost of operation and maintenance for that year must therefore be omitted from this report.

All of which is respectfully submitted.

MARTIN A. KNAPP, *Chairman.*

The PRESIDENT OF THE SENATE OF THE UNITED STATES.

APPENDIX.

PART I.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE AUDITOR,
Washington, March 24, 1904.

Memorandum.—Senate resolution, dated March 11, 1904, relative to advance in freight rates and the resulting increase in revenue of the railway corporations of the United States.

The freight traffic of the railways of the United States is carried under two general classes of schedules known as "class tariffs" and "commodity tariffs." The latter name specific rates on certain commodities, such as grain, lumber, coal, live stock, dressed meats, fertilizers, etc. In the absence of commodity rates the regular class tariffs apply. In these tariffs the rates are arranged in classes and are used in connection with a freight classification, which indicates the class to which any given article belongs. Where an article is changed from one class to another, the effect, therefore, is to change the rate of transportation upon that article.

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For many years there have been three general freight classifications in use throughout the United States, namely, the official classification, which governs the class rates generally in the territory north of the Ohio and Potomac rivers and east of the Mississippi River and Lake Michigan; the southern classification which governs generally in the territory south of the Ohio and Potomac rivers and east of the Mississippi River, and the western classification, which governs generally in the territory west of the Mississippi River and also applies on traffic between Chicago, Peoria, and certain other points east of the river and points west thereof.

On January 1, 1900, official classification No. 20 became effective. This classification made many advances in ratings over the previous classification (No. 19), which was in force prior to the date mentioned. The total number of ratings advanced was 818, but it was found that there were many duplications, the same article being classified more than once in different parts of the classification, and that such duplications amounted to about 30 per cent of the total number. The actual number of advances was 572, as follows:

Ratings.	Advanced—	
	From class—	To class—
280	4	8
155	8	2
71	6	5
25	2	1
15	5	4
8	1	1½
5	1	D-1
2	1½	D-1
1	D-1	2½
1	4	2
572		

In the same classification (No. 20) there were six reductions in rating.

On March 10, 1900, most of the articles which had been advanced on January 1 from fourth to third class were reduced to 20 per cent less than third class, and most articles which on same date had been advanced from third to second class were reduced to 15 per cent less than second class, and these ratings still remain in force.

Prior to February 1, 1900, southern classification No. 25 had been for some time in force. There were three issues of this classification during the year 1900, namely, No. 26, effective February 1; No. 27, effective June 1; and No. 28, effective November 10. By comparing the last with No. 25 it was found that 636 changes were made during the year, of which 531 were advances and 105 reductions in rating.

Western classification No. 30, which became effective January 25, 1900, superseding No. 29, which took effect July 1, 1899, made 257 changes in rating, of which 240 were advances and 17 were reductions.

These classification changes were quite fully set forth in the annual report of the Commission for the year 1900. A number of issues of each of the classifications referred to have been made since the year 1900, but the changes made in such issues were comparatively few and were not of such importance as to deserve special notice.

As before indicated, all traffic which is carried at class rates throughout the United States is carried under one or more of the three general classifications above described. All of the thousands of railroad points throughout the country are therefore more or less affected by these classification changes, but in order to form an estimate which would be of any value as to the amount of increase in the revenues of the railways as a result of such advances in classification it would be necessary to be in possession of some knowledge, not only as to the separate tonnage carried of each of the articles affected, but as to the points between which they were carried as well. This information is not available, and even if it could be obtained the undertaking would be so enormous as to render it virtually impracticable.

The annual reports filed with the Commission by the common carriers under section 20 of the act to regulate commerce show the total tonnage of all freight carried and the total freight revenue derived therefrom; but with the exception

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of a few important commodities, such as coal, ores, forest products, etc., the separate tonnage of the articles transported is not shown, and in the cases of the exceptions referred to the points between which such articles are carried are not stated. The following table shows the total tonnage and freight revenue of all the railways in the United States for the years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the average rate per ton for each year, except that the figures given for the year last named represent about 98 per cent of the total operated mileage:

Year ending June 30—	Total number of tons of freight carried.	Total freight revenue.	Average rate per ton.
1899.....	959,763,583	\$918,737,155	\$0.9520
1900.....	1,101,680,238	1,049,256,323	.9524
1901.....	1,089,226,440	1,118,543,014	1.0209
1902.....	1,200,315,787	1,207,228,845	1.0058
1903.....	1,221,475,948	1,318,320,604	1.0793

Attached hereto is a statement showing the actual tonnage and freight revenue for the years named, and also what the total freight revenue would have been for each of the fiscal years subsequent to that ending June 30, 1899, at the average rate per ton which prevailed that year, also the increase in revenue for such subsequent years resulting from the higher average rate per ton. It is believed that such a statement gives a more accurate idea of the increased revenue resulting from an advance in freight rates and classifications than can be obtained in any other way. The figures given include the tonnage and also the revenue derived from both class and commodity rates, there being no way of showing these items separately.

It should be borne in mind, in connection with this statement, that the average rate per ton and the average rate per ton per mile, being determined from the tonnage carried and the revenue derived therefrom, and not from the tariffs, would vary somewhat for different years without any change being made in the tariff rates, such variation being due to the difference in the relative quantity of the various classes of freight carried. For instance, should there be a marked increase in the percentage of tonnage of low-grade freight for any given year over the preceding year, the average rate per ton and the average rate per ton per mile would show a decrease for the latter, as compared with the previous year, based on the same tariff rates. It may be said that there is a constant tendency toward an increase in the percentage of the tonnage of low-grade freight, so that if there had been no advances in rates or classification since the year ending June 30, 1899, it is safe to say that the average rate per ton for each of the subsequent years would have been somewhat less than for that year.

The increase in the average rate per ton for the year ending June 30, 1900, over the previous year was quite small, being only four one-hundredths of a cent per ton, and by reference to the statement it will be seen that the increase in revenue for that year over the preceding year was only \$456,736. For the year ending June 30, 1901, the increase in the average rate per ton over the year ending June 30, 1899, was 7.49 cents, the difference in revenue being \$81,599,443. The average rate per ton for the year ending June 30, 1902, was \$1.0058, being 5.38 cents greater than the average rate for the first-mentioned year, but a little over 2 cents per ton less than for the preceding year. The difference in revenue for this year over what would have been produced by the average rate of the first year in question was \$64,528,216. The falling off in the average rate per ton appears to have been due to a large increase in low-grade tonnage in 1902 over the preceding year. For instance, in the items of coal, coke, and ores alone there was an increase in tonnage for this year over the preceding year of nearly 30,000,000 tons.

For the year ending June 30, 1903, it will be seen there was a large increase in both tonnage and revenue over any of the previous years mentioned, the increase in revenue, however, being relatively much greater than the increase in tonnage. The average rate per ton for this year was \$1.0793, or nearly 12½ cents per ton greater than the average rate per ton for the year ending June 30, 1899, been at the average rate of the first-mentioned year.

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In the reports of the Commission on the Statistics of Railways in the United States, compiled from the annual reports of the carriers filed under section 20 of the act to regulate commerce, the railways of the country are divided into ten territorial groups, the tonnage, revenue, etc., for each group being separately shown. As heretofore indicated, the annual reports of the carriers show the tonnage of a few important commodities separately, and while the separate revenue derived therefrom and the points between which the articles are carried are not given, where advances in rates have been made on any of these commodities it is possible to form an estimate of the increase in revenue resulting from such advances, which no doubt, while considerably at variance with the actual figures, were they obtainable, will give a fair idea as to the increase in revenue resulting from an advance in rates on such articles.

In the territory governed by the official classification, heretofore described, both hay and sugar in carloads were advanced January 1, 1900, from sixth to fifth class. Between New York and Chicago this advance amounts to 5 cents per 100 pounds, or \$1 per ton. Between New York and the territory lying between that point and Chicago the advance would be less, in some cases as low as 40 cents per ton, while in the territory west of Chicago and east of the Mississippi River the advance would be in some instances as high as \$1.50 per ton. An average advance of 80 cents per ton on these two commodities in official classification territory, it is believed, is a fair estimate.

The total tonnage of hay reported by originating roads for the years ending June 30, 1900, 1901, and 1902, was as follows:

	Tons.
1900 -----	4,112,002
1901 -----	4,086,700
1902 -----	4,681,509

The figures giving the separate tonnage of this commodity for the year ending June 30, 1903, are not yet available.

It is calculated from the statistical reports of the Commission that of the total tonnage carried by the railroads of the United States about 65 per cent is carried in the territory governed by the official classification. Taking the total tonnage of hay for the last year mentioned (1902), namely, 4,681,509 tons, 65 per cent thereof would be 3,042,980 tons. Based on an average advance of 80 cents per ton in rate, the increase in revenue for that year would be \$2,434,384, and from January 1, 1900, to the present time, during which the advanced rates have been in force, nearly \$10,000,000. There was no advance in the classification of hay in the southern and western classifications.

The total tonnage of sugar originating on reporting roads for the same years was as follows:

	Tons.
1900 -----	2,050,558
1901 -----	2,301,932
1902 -----	2,254,571

The classification of sugar, as before stated, was advanced in the official classification territory at the same time as hay (January 1, 1900), and to the same extent, namely, from sixth to fifth class, the increase between New York and Chicago being 5 cents per 100 pounds, or \$1 per ton. Taking 65 per cent as the proportion of the total tonnage carried in the official classification territory, we have for the year ending June 30, 1902, 1,465,471 tons. On the basis of an average advance of 80 cents per ton the increase in revenue for that year would be \$1,172,376, and from January 1, 1900, to the present time, during which the advanced rates have been in force, something over \$4,500,000.

In the western classification no advance was made in the classification of sugar, while in the southern it was advanced from sixth to fifth class. In the latter territory, however, sugar shipped from the regular shipping points, such as New Orleans, La., and Mobile, Ala., is almost invariably carried at commodity rates. It does not appear that any general advance has been made in these rates, and recently material reductions have been made.

On January 1, 1900, when the carload rating of hay and sugar was advanced, the carload rating on about 70 other articles was also advanced from the sixth to the fifth class in the official classification, but there is no way of arriving at even an estimate of the tonnage of these articles, and no estimate can, therefore, be made as to the increased revenue resulting from the advance in classification of such articles.

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At the beginning of the year 1903 the rates on all iron and steel articles were advanced 10 per cent in the territory governed by the official classification. The annual reports of the carriers do not appear to include all iron and steel articles in the table which gives the separate tonnage for particular commodities. According to the reports for the year ending June 30, 1902, the total tonnage of iron and steel articles originating on reporting roads was as follows:

	Tons.
Iron, pig and bloom-----	14, 714, 989
Iron and steel rails-----	4, 849, 255
Other castings and machinery-----	9, 696, 433
Bar and sheet metal-----	10, 624, 712

Machinery is not included in the list of iron and steel articles and does not take the same rates. The third item, as given above, must therefore be eliminated. The total of the other three items is 30,188,956 tons. Taking 65 per cent of this as the tonnage carried in official classification territory we have 19,622,821 tons. The advance ranged from about one-half to 1½ cents per hundred pounds. The average was probably short 1 per cent per hundred pounds, or 20 cents per ton. Assuming the tonnage of these articles for the year 1903 to be not less than for 1902, the increased revenue thereon for that year, owing to the advance in rates, would be about \$4,000,000.

The total tonnage of bituminous coal for the year ending June 30, 1902, was 154,402,501 tons. There appear to have been few important changes in the rates on this commodity in southern and western territory since January 1, 1900. In the territory north of the Ohio and Potomac rivers and east of the Mississippi of this commodity for 1902, the increase in revenue for 1903, at an average of 10 cents per ton. Again, taking 65 per cent of the entire tonnage as the amount carried in this territory, we have 100,361,625 tons. Based on the tonnage of this commodity for 1902, the increase in revenue for 1903, at an average advance of 10 cents per ton, would be a little over \$10,000,000. There appear to have been no material advances in the rates on anthracite coal during the period in question.

In June, 1903, the rates on lumber and other forest products from all lumber-producing points in the southern territory east of the Mississippi River to Ohio River points and points north thereof, also from points in Arkansas, Louisiana, and Texas to the same territory, were advanced 2 cents per 100 pounds. For the year ending June 30, 1902 (figures for 1903 not yet available) the total tonnage of lumber and other forest products was 67,703,050 tons, of which it is estimated that about 20,000,000 tons originated in the territory above described. Assuming that there has been no falling off in tonnage, the increase in revenue for the nine months the advanced rates have been in force, at an advance of 2 cents per 100 pounds, or 40 cents per ton, would be about \$6,000,000.

Grain and grain products constitute an important part of the freight traffic of the country, the tonnage for the year ending June 30, 1902, being 36,813,857 tons. The fluctuation in the rates on these commodities during the last four years, however, has been such as to render an estimate of the effect of such changes on railway revenue impracticable. The rates on this traffic for a large portion of the country are based on the rates from Chicago to New York. The following table shows the changes in the rates on wheat and flour, carloads, from and to the points named, since January 1, 1900, to the present time:

	Cents per 100 pounds.
January 1, 1900-----	22
March 5, 1900-----	15
November 1, 1900-----	17½
June 1, 1901-----	15
October 21, 1901-----	17½
December 8, 1902-----	20
May 11, 1903-----	18
December 1, 1903, to present date-----	20

As will be seen, the rate in force January 1, 1900 (which became effective November 1, 1899), was higher than at any subsequent date, while for a considerable portion of the time the rates on this traffic were on the basis of 15 cents per 100 pounds Chicago to New York.

Respectfully submitted.

J. M. SMITH, Auditor

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Statement showing the total number of tons of freight carried by the railroads of the United States for the fiscal years ending June 30, 1899, 1900, 1901, 1902, and 1903, with the total revenue accruing therefrom; also the revenue which could have accrued at the average rate of 95.2 cents per ton for the years ending June 30, 1900, 1901, 1902, and 1903, this being the average rate for the year ending June 30, 1899; and the increase in the revenue for the years 1900, 1901, 1902, and 1903 resulting from the increase in the average rate per ton for those years.

Year ending June 30—	Number of tons of freight carried.	Total freight revenue as charged.	Amount of freight revenue at average rate per ton of 95.2 cents, being the average rate for the year ending June 30, 1899.	Increase.
1899	959,763,583	\$913,737,155	\$913,737,155
1900	1,101,680,238	1,049,256,323	1,048,789,587	\$456,736
1901	1,089,226,440	1,118,543,014	1,036,943,571	81,599,443
1902	1,200,315,787	1,207,228,845	1,142,700,629	64,528,216
1903 ^a	1,221,475,948	1,318,330,604	1,162,845,102	155,475,502

^a The figures given for the year 1903 represent about 96 per cent of the total mileage.

PART II.

Summary showing gross earnings, operating expenses, ratio of operating expenses to earnings, mileage operated, etc., of the railways in the United States, for the years ending June 30, 1899, 1900, 1901, and 1902.

Item.	1899.			1900.			Increase, 1900 over 1899.	
	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Proportion to total operating expenses.	Per mile of line operated.	Amount.	Per cent.
Gross earnings from operation	\$1,313,610,118	P. ct.		\$1,487,044,814	P. ct.		\$173,434,696	13.20
Operating expenses:								
Maintenance of way and structures	180,410,806	21.05	962	211,220,521	21.97	1,097	30,809,715	17.08
Maintenance of equipment	150,919,249	17.62	805	181,173,880	18.84	941	30,254,631	20.05
Conducting transportation	486,159,607	56.73	2,533	529,118,293	56.04	2,748	42,958,719	8.84
General expenses	38,676,883	4.51	200	39,328,715	4.09	204	651,832	1.69
Unclassified	802,454	.09	4	589,019	.06	8	\$213,435	\$26.00
Total operating expenses	856,968,999	100.00	4,570	961,428,511	100.00	4,993	104,459,512	12.19
Percentage of operating expenses to earnings	65.24			64.65				
Mileage operated (single track)	187,534.68			192,556.03				

^a Decrease.

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ART II.—Summary showing gross earnings, operating expenses, etc.—Continued.

Item.	1901.			Increase, 1901 over 1900.	
	Amount.	Proportion to total operating expenses.	Per mile of line op- erated.	Amount.	Per cent.
Gross earnings from operation	\$1,588,526,067	P. ct.	\$8,128	\$101,481,223	6.38
Operating expenses:					
Maintenance of way and structures	231,056,602	22.42	1,182	19,836,061	9.89
Maintenance of equipment	190,259,580	18.46	973	9,125,680	5.04
Conducting transportation	505,205,799	54.87	2,890	36,149,463	6.88
General expenses	42,506,553	4.13	218	3,237,788	8.23
Unclassified	1,208,786	.12	6	619,747	105.22
Total operating expenses	1,069,527,270	100.00	5,269	68,968,759	7.17
Percentage of operating expenses to earnings	64.86				
Mileage operated (single track)	195,561.92				

Item.	1902.			Increase, 1902 over 1901.	
	Amount.	Proportion to total operating expenses.	Per mile of line op- erated.	Amount.	Per cent.
Gross earnings from operation	\$1,726,380,267	P. ct.	\$8,025	\$137,654,230	8.68
Operating expenses:					
Maintenance of way and structures	248,381,594	22.25	1,241	17,324,982	7.50
Maintenance of equipment	213,380,644	19.12	1,068	23,061,064	12.18
Conducting transportation	600,961,695	54.64	3,047	44,605,906	7.91
General expenses	44,197,880	8.96	221	1,631,327	8.83
Unclassified	326,934	.03	2	881,832	72.95
Total operating expenses	1,116,248,747	100.00	5,577	86,861,477	8.38
Percentage of operating expenses to earnings	64.65				
Mileage operated (single track)	200,154.56				

^a Decrease.

Further, in respect to advances and reductions in Southern territory, I have a communication recently addressed to me (January 13) by the president of the King Hardware Company, of Atlanta, Ga., in which he states differences in rates on a comparatively unimportant commodity—coffee mills (although this commodity, as a matter of fact is quite an important one in the hardware trade)—which I will not read, but it shows excessive rates to Atlanta as compared with Nashville from Columbus, Ohio; Freeport, Ill., and Meriden, Conn., to which he attaches a statement of changes in classification of various articles of hardware, showing the percentage of increase in rates, as per Southern classification No. 25, which is the classification that was in force in February, 1900, when these advances in classification

were first commenced to be made, extending up to November in that same year, as compared with the current classification, No. 32, now in force, based on current rates from Cincinnati, Ohio, to Atlanta, Ga. in which the former classification and rates and changes in classification and rates are given on thirty-nine different articles of hardware and the percentage of advance in consequence of that change in classification is shown for each, the result of which is that on the thirty-nine articles the advance in rate arising from changes in classification ranges from 13.1 to 84 per cent, and the average increase, counting the number of articles, without taking the tonnage into consideration (which it is impossible to arrive at), is 34.5 per cent. I will file this also with the committee.

OFFICE OF KING HARDWARE COMPANY.
Atlanta, Ga., January 13, 1905.

E. P. BACON, Washington, D. C.

DEAR SIR: If the papers reported Mr. Spencer correctly on yesterday, it would seem that he had overlooked the true situation with regard to the effect of some changes in the classification.

During a recent period of time, instead of everything being reduced, we herewith inclose a tabulated statement showing the increase in the percentage due to some of these reclassifications.

As an evidence of what some distributing points suffer in the way of discriminations, beg to hand you below a table showing current rates on coffee mills to Atlanta, Ga., and to Nashville, Tenn.:

Coffee mills.

From Columbus, Ohio, to—	
Atlanta, Ga.....	\$1. 24
Nashville, Tenn.....	. 66
Nashville, Tenn. (carload).....	. 49½
From Freeport, Ill., to—	
Atlanta, Ga.....	1. 26
Nashville, Tenn.....	. 67
From Meriden, Conn., to—	
Atlanta, Ga.....	1. 09
Nashville, Tenn. ^a 78
Nashville, Tenn. ^a (carload).....	. 42

We have taken the most prominent shipping points in the West, Middle West, and East.

Very truly, yours,

W. E. NEWELL, Vice-President.

^a These frequently move via Atlanta.

Statement of changes in classifications of hardware, showing percentage of increase in rates, per Southern classification No. 25, compared with current classification No. 32, based on current rates from Cincinnati, Ohio, to Atlanta, Ga.

[Less than car load, L. C. L.; car load, C. L.]

								Special iron.	
								C. L.	L. C. L.
Agate ware, granite or enameled ware, iron or steel stamped, in boxes	107	92	81	68	56	46		31	37
Arms									
Belting, viz:									
Cotton									
Rubber									
Earthenware, in crates or hogsheds									
Forges, portable									
Fruit jars									
Grease, axle									
Grindstones, without fixtures									
Handles, n. o. s.									
Hatchets, boxed									
Iron or steel articles, viz:									
Axles, carriage or wagon, loose or wired together									
Bolts, nuts, rivets, and washers, in kegs, casks, or barrels									
Brackets, shelf, n. o. s.									
Boxes and skelns, in kegs, barrels, or loose									
Castings, not part of machinery, each piece weighing less than 15 pounds									
Chain belting, rel. val. 2¢ in barrels									
Same, in boxes or barrels, n. o. s.									
Chains, iron, in barrels or casks, rel. val. 2 cents per pound									
Crowbars									
Harrow teeth, in kegs or barrels									
Nails, in kegs									
Hooks, backband, in kegs, barrels, or casks									
Lap rings									
Picks and mattocks, in barrels or kegs									
Plow irons, clevises, frogs, heel bolts, molds, plant fenders, plates, paints, and wings, in barrels, kegs, or casks									
Sedirons, in barrels or casks, with contract that no other articles should be put in same									
Shoes, horse and mule, in kegs									
Staples, fence, in kegs									
Tires, wagon									
Wire, iron or steel, in barrels, coils, or reams									
Wedges, without handles									
Lamp and lamp goods, packed									
Leather									
Nails, horse and mule, in boxes									
Rope, cotton									
Shot, in kegs or in double sacks									
Tinware									
Spring vehicle									

Thirty-nine articles. Increase in rates arising from change in classification, 13.1 to 84 per cent. Average increase, 34½ per cent.

I also received copy of a statement from a very large lumber corporation in Mississippi, signed by Silas W. Gardiner, one of the owners of the corporation, in which he shows the advances made in rates of freight on lumber for ten years, which I will not stop to read, but will file with the committee. It shows an advance of 4 cents per hundred pounds from the lumber district of Georgia, Ala-

bama, and Mississippi to points north of the Ohio River since the year 1898. I will not take the time of the committee to read anything further from that.

The paper referred to is as follows:

DECEMBER 22, 1904.

Senator W. B. ALLISON, *Washington, D. C.*

DEAR SIR: I write to urge upon your attention and favorable consideration the enactment of legislation at this session of Congress giving to the Interstate Commerce Commission the power suggested by the President in his late message to Congress.

The railroads of this country have, by consolidation of interests and mergers, so entrenched and strengthened themselves, and have in so many instances made tyrannous use of their power, that conditions in many lines of business and manufacture are well-nigh intolerable. They claim the sole power to make rates and classifications, and in recent contests, where opposition has been made in this vicinity to arbitrary advances in rates on lumber, they have made the statement that the only criterion as to the justice of a rate made by them was, or is, its publication.

I would state for your information that since the beginning of 1898 rates have been advanced on southern pine lumber to points north of the Ohio River 4 cents per 100 pounds, which means an advance of \$1 to \$1.50 per 1,000 feet, according to the kind of lumber shipped, whether dry and dressed or rough and heavy. This is a tremendous tax to lay upon southern lumber manufacturers, because they have to absorb it in their prices. To make this clear to you I will make the following statement of average prices received by our company for each year from 1893 to 1904, inclusive:

Statement of average prices per thousand feet received for their lumber production (not including lath) by Eastman, Gardiner & Co., of Laurel, Miss., after deducting freight, for each year from 1893 to 1904, inclusive.

1893 -----	\$0. 37	1899 -----	\$9. 71
1894 -----	8. 14	1900 -----	10. 27
1895 -----	8. 83	1901 -----	10. 83
1896 -----	8. 24	1902 -----	11. 89
1897 -----	7. 99	1903 -----	11. 32
1898 -----	8. 79	1904 -----	10. 64

When you consider that wages have advanced 25 per cent and pine timber lands 100 per cent during the above period, you will see that lumbermen are not and have not been in any condition to bear these heavy advances in freight rates.

To assure you of the correctness of the above statement, we shall be willing to submit the same to you or anyone else by affidavit, and you can further confirm the statement in a general way by interviewing any of the northern lumber dealers who are and have been handling southern pine lumber for a number of years.

This additional burden of freight rates over that of 1898 and previous, amounts to \$40,000 or more on our shipments alone annually, and to millions of dollars on southern pine going into northern States.

In view of the facts above presented, I most earnestly hope you will give your support to the endeavors that are being made to enable the Interstate Commerce Commission to name a just and fair rate when complaint is made that in their judgment is unfair and unjust.

We are Iowa people, having been in business there many years, and my home is in Clinton yet. I therefore feel justified in appealing to you as a constituent to give full consideration to this great question.

Very respectfully, yours,

SILAS W. GARDINER.

I want to bring out one point in connection with the result of these advances as compared with the increase in operating expenses, the result of which it seems to me is shown more conclusively and defi-

nity by the actual net earnings of the railways of the country during the period in question than by any comparison of figures, either in rates of freight or wages or other expenses of operation. The increase in net earnings, as shown by the annual statistical reports of the Interstate Commerce Commission, between the years 1899 and 1903 amounts to \$184,989,077. That is the increase in net earnings for the four years in question. That is an increase of 40.5 per cent on the earnings of the preceding year. The increase in mileage during that time was 7.42 per cent.

Mr. MANN. That is single-track mileage, is it?

Mr. BACON. Single-track mileage, certainly; the length of the railroads, which is always what is counted. The 200,000 miles of railroad—a little over that—now in existence is what we take into account.

Mr. MANN. That takes no account of double tracking?

Mr. BACON. No; it simply takes the length of the railroads, the increase in length of lines, which is 7.42 per cent during that period.

The CHAIRMAN. Does your paper give the tonnage of the two periods?

Mr. BACON. Yes, sir. I will come to that directly. The increase in tonnage of freight during the same period was 10.9 per cent. The increase in freight revenue during the same period was 25.6 per cent. Those are final and conclusive figures, as I say, which show the real result of the advances in rates on one hand and increase in expenses on the other, showing an increase in tonnage of 10.9 per cent and an increase in freight revenue of 25.6 per cent.

Mr. MANN. Have you made any comparison anywhere, Mr. Bacon, as to the percentage of dividends, compared with the receipts for the two respective periods?

Mr. BACON. I have not any figures of that kind at hand, Mr. Mann. I can obtain them if desired, but there is no time at present to do so. I will say, generally speaking, however, that dividends have ranged all the way from nothing up to 8 per cent—dividends on the stock of the various railway companies—and that the net earnings of many of the railways, according to the figures published, show as high a net result as from 10 to 20 per cent on the capital stock applicable to dividends; but the dividends themselves have not been increased above the customary rate for some years past (the customary rate being 6 or 8 per cent) except in some individual cases where 1 per cent additional may have been declared, or in the case of some railroad companies that have not been paying dividends previously, they have paid a small dividend during the past few years.

Mr. MANN. Do your tables show what percentage of net to gross receipts there has been for the two periods you have named?

Mr. BACON. Of gross receipts?

Mr. MANN. What the percentage of net is to the gross receipts?

Mr. BACON. I have not that with me; no, sir; I have figures of that kind, but they do not come to my mind with sufficient clearness to undertake to state them.

The CHAIRMAN. Is there any considerable number of miles of railways that pay no dividends?

Mr. BACON. I could not say what percentage it constitutes, but there is a large number of railways that never have paid dividends and never will.

The CHAIRMAN. Can you approximate the percentage of the whole mileage?

Mr. BACON. I could not.

The CHAIRMAN. That have not paid dividends?

Mr. BACON. I have never attempted to do that. But in such cases it arises generally from the fact that the railroads have been enormously overcapitalized, and in other cases from the fact that the roads were unnecessary, that they were built to parallel other lines, or were built expensively, and, as I said before, under an excessive capitalization—a great overcapitalization. I could give the committee those figures if desired, but I am unable to do so at the present.

One point I wish to bring to the cognizance of the committee, is what appears to me to be a misapprehension as to the probability of the number of cases of litigation that would be likely to arise under the change in the law which it is proposed to make. It appears to me that the very fact of the existence of the power which it is proposed to confer upon this Commission will operate to a very large extent in deterring the carriers from imposing rates upon the traffic which they can not defend before the Interstate Commerce Commission. In the next place it will operate largely to put the shipper upon a parity with the carrier in attempted negotiations between them as to the adjustment of rates which are deemed by the shipper to require adjustment. As it is now it is entirely in the hands of the carrier as to whether to make concessions when desired by the shipper or not, and as a matter of fact if they do make any concessions they make only a small proportion of what the shipper considers himself entitled to, the fact of the matter being that the final and ultimate decision of the case is wholly in the hands of the one party, and he will grant such concessions as he deems his interests require, or as he deems necessary to pacify the complainant; but if this power exists in the hands of the Commission to take this case up and say just what shall be done to adjust this difficulty between them, the complainant or the shipper occupies a position, in a certain respect at least, of treating with the carrier upon common ground, the carrier realizing that if he does not yield what is reasonable and proper the complainant can take the case to an independent or an impartial tribunal that will compel them to do it.

Hence, I think the number of cases that will come before the Commission under this law is very greatly overestimated and that the Commission will have no difficulty in handling the cases that will be brought before it. Furthermore, I wish to say that I think that the courts that are already provided will find no difficulty in dealing with these cases, and it will be very much preferable to the interests that I represent—the commercial organizations of the country—if the establishment of a separate court to treat these cases were left for after consideration. Wait until the operation of the law demonstrates the necessity, if there be one, for the establishment of additional courts. It will be a year, at least, before any case can be gotten through the Interstate Commerce Commission after the enactment of this law, should it be enacted, and during that time, if it appears that there is any necessity for additional courts, Congress will meet and there will be opportunity to provide them. Furthermore, I would like very much—I say “I;” I speak for the interests I represent—we would like very much to see this question of whether or not this

power is to be vested in the Commission presented to Congress entirely independent of any other proposition.

Let Congress say whether it deems best to confer this power upon the Commission, and let that be said independent of any other question. And then, if it desires to do so, and decides to do so, after that has gone into effect the necessary court machinery can be provided for it in ample time and it will divest the question of very serious complications.

I have heard many members of Congress and some members of the Senate object very seriously to the enlargement of the courts of the country, the enlargement either of the circuit courts by an additional judge for each, or the establishment of any new court. That question is going to involve this main question in great difficulty, and it seems to me it will be to the interests of the country, it will be to the advantage of Congress, to determine the one question first by itself, without reference to any other; and I sincerely commend the consideration of this point to this committee.

Mr. ADAMSON. I understand you mean if we can secure the enactment of the first section of most of these bills you will consider that we have made great progress?

Mr. BACON. That is it; great progress; and it will be settled without complicating it with any other issue. That is very desirable, I think. Congress ought to have the opportunity to pass upon that one question entirely independent of any other. It is the great question before this country to-day, and if Congress is placed in a position where it can treat upon that question without complication or reference to any other we will get a fair and more satisfactory expression, certainly, of the attitude of Congress in relation to this question.

Mr. MANN. Is your opposition to the court proposition an opposition based on the prospect of legislation or an opposition to the proposition itself?

Mr. BACON. It is in the belief that it is unnecessary and a belief that it is better to wait until the necessity for it demonstrated, but primarily because it will involve the main question and because Congress will not be able to act upon that question by itself. That has been so long before the country that it seems to me that Congress is entitled to the opportunity to treat the question by itself, independent of any other.

Mr. ADAMSON. Do you not believe that if certainty and expedition are secured in the law that it will result in a diminution of litigation anyhow?

Mr. BACON. That is what I previously stated.

Mr. ADAMSON. I had forgotten that.

Mr. BACON. That is what I first stated.

Mr. MANN. I have always understood from you, Mr. Bacon, that the principal trouble was discrimination between localities and between commodities. That is a discrimination which the railroad companies can not remedy without the consent of the localities or the shippers of the commodities.

Mr. BACON. For that very reason it should be referred to an independent tribunal to decide for them. There are a great many claims of that kind, where one community is jealous of another, that are not well founded.

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Mr. BACON. For that very reason it should be referred to an independent tribunal to decide for them. There are a great many claims of that kind, where one community is jealous of another, that are not well founded.

Mr. ADAMSON. And would not that require the Commission to act?

Mr. BACON. Certainly.

Mr. ADAMSON. You think that would require the Commission to act?

Mr. BACON. Yes; but, as I say, it will take a year or more to reach a decision by the Commission. That has been the history of the cases that have been before the Commission—it will take a year at least to decide a case, to take the testimony and hear the arguments and bring the case to a conclusion. I do not think there has been a case decided before the Commission in less than a year. A majority of the cases—the great bulk of the cases, in fact—take from one to three years. It is very rare that a case is settled in as short a time as a year, and it is very improbable that you would get any cases for this new court to take hold of within a year from the date of the enactment of the law.

Mr. ADAMSON. I was speaking of two communities. One of them thinks the other has the better of it. If the railroad company changes its rate, then the first community will think the other has the better of it. Is not that a question to be tried by the Commission?

Mr. BACON. Yes; to be sure.

Mr. ADAMSON. Will not that make a good deal of litigation?

Mr. BACON. I do not call that litigation, but the consideration of the question by the Commission whether discrimination exists or not.

Mr. ADAMSON. I mean litigation before the Commission.

Mr. BACON. It will not tend to increase those cases; no. The fact is, as I have said, that the Commission having power to deal with them they will be satisfactorily adjusted between shippers and the carriers in nine cases out of ten.

Mr. ADAMSON. Excuse me, but I do not see how it is possible for the railroad companies and the shippers to settle it, when it is a rivalry between communities, without going to the Commission.

Mr. BACON. They often do settle it now.

Mr. ADAMSON. They have not had any tribunal to go to.

Mr. BACON. They are not complaining about it now. The Commission has treated those cases during all the time since its organization, but the difficulty is that its decisions are not operative; they are merely opinions which are expressed.

I want to say a word in relation to a defect which it strikes me exists in the Hepburn bill, which has been just introduced, which I want to call the attention of the committee to, and that is the provision or the absence of any provision in reference to additional testimony which either party may desire to present when the order of the Commission is under review by the court. There has been great difficulty arising heretofore, as you well know, in consequence of the fact that new testimony has been introduced before the court which has not been before the Commission, and has practically made a new case of it, and consequently the Commission has been overruled in its previous decision; whereas if it had had that additional testimony it might have made an entirely different decision. I want to cite to the committee the declaration of the Supreme Court on that point in the case of the Cincinnati and New Orleans and Texas Pacific Railway Company against the Interstate Commerce Commission, 162

There is this advantage in the existence of such a bond. It would remove the present incentive from the carrier to prolong the litigation in the courts, because during the prolongation of that litigation as the law is now he is receiving the benefit of these excessive rates, which have been so found by these two bodies to which I have referred, and it is desirable to have the bond on that account. But I say let the excess in freight which is found, in case the order of the Commission is finally sustained, be paid to the Government. Nobody has any claim to it; consequently give it to the Government and it could go toward meeting the expense of this Commission.

Mr. MANN. Would that be the case in the case of discriminatory rates between localities?

Mr. BACON. Yes; precisely.

Mr. ADAMSON. I thought you were going to state the converse of this situation. In case the official judgment is in favor of the railroads and the railroads sue the shipper and get back the difference that he ought to have paid, how is the company to recoup itself? Who is going to be liable for that?

Mr. BACON. If he is going to be liable in the future for the payment of the difference between the rate fixed by the Commission and the one finally decided upon, he is going to indemnify himself in advance.

Mr. ADAMSON. How would you know that he is solvent?

Mr. BACON. To be sure, and for that reason he is going to protect himself by putting it into the price of the goods he handles.

The CHAIRMAN. Do you think, Mr. Bacon, from your knowledge of railways, that where an indebtedness to a shipper is fixed in amount by his bill of lading on the one hand and the order of the Commission on the other, in a sum that he can not avoid by any possibility in a court of justice, that he would wait to be sued before he would make prompt payment of a debt of that kind?

Mr. BACON. He would indemnify himself in the outset by putting the freight which he would be liable to pay in the future to the carrier into the price of the goods when he sells them.

The CHAIRMAN. That is, you think when the rate is lowered by the Commission and is in litigation the carrier would increase that rate that he was at that time charging, do you, to recoup?

Mr. BACON. It may be that way, or it might be that he would keep the lower rate in effect and hold the party who paid the freight liable to him for the subsequent payment of the difference.

The CHAIRMAN. Is that practicable?

Mr. BACON. I do not consider either of them practical; no, sir; but if such were the case the shipper would necessarily protect himself by putting the rate that he would ultimately be liable to pay on the property which he handled. He would be ruined in a year's time if he did not do it in any business that I know anything about.

The CHAIRMAN. Suppose, on the other hand, that the action of a commission is not sustained, and that the rate is held to be unreasonable. What is the remedy of the carrier?

Mr. BACON. The carrier would probably protect itself by continuing the rate in question in force. That would be his natural and almost necessary course.

The CHAIRMAN. In that event, what remedy would the shipper have?

Mr. BACON. The shipper in any case protects himself by adding the freight that he has either paid or is liable to pay into the cost of the goods, the price of the goods which he handles when he sells them, the same as the cotton buyer or the grain buyer or the cattle buyer takes it out in advance from the producer of whom he purchases those products in the country.

Mr. WANGER. Would not the dealer in many instances, if this bond provision became effective, agree with his customers that if the freight rate were reduced so many cents a bushel and that was paid back to him that he would hand it over to his customer?

Mr. BACON. In the case of the grain buyer buying from men he knows in the country, he might do that in some instances or do so in part.

Mr. ADAMSON. If he thought they knew about it?

Mr. BACON. Oh, it would be only a division of it with the other men if he did anything at all, but in all probability he would not attempt anything of the kind.

Mr. MANN. Have you ever considered this phase of it? Suppose the rate fixed by the carrier is held by the court to be unreasonable and it has been in effect since it was fixed by the Commission. I mean the rate fixed by the Commission is held by the court to be unreasonable and it has been in effect. Will the railroad companies have the right to sue the shippers to recover the difference between the actual charge and the rate fixed by the court?

Mr. BACON. It is proposed to put up a bond to protect the carrier in that case.

Mr. MANN. What bill provides that?

Mr. BACON. This provision I have just read, I understand, covers that.

Mr. MANN. No; there is no bond to protect anyone in the position I am putting to you. Suppose there is no bond. Assume a case where there is no bond and the rate is 30 cents a hundred, and the Commission fixes a rate of 25 cents a hundred, and it goes into effect, and the court holds that it is unreasonably low and throws it out—

Mr. BACON. The carrier is not going to put that rate into effect when he is testing it in court.

Mr. MANN. I am assuming that the carrier is required to put it into effect, as he would under some of the bills, and it is in effect by requirement of the law, which the Supreme Court holds to be unreasonable. Now, will the carrier, having been compelled to put a rate into effect which is unreasonably low, have the right to sue the shipper and recover from the shipper the difference between the rate actually paid and the reasonable rate?

Mr. BACON. I should not think he would; no, sir.

Mr. ADAMSON. Would he not, Mr. Mann, unless we prevented it?

Mr. MANN. I am inclined to think, under the decisions of the court, that he might have.

Mr. BACON. That is a legal question; but if that is the case, the shipper would protect himself in the same way I have previously indicated.

Mr. MANN. In that event there is no possible objection. If the shipper did not protect himself in such cases, there is no object in putting the rate into effect so far as the consumer is concerned.

Mr. BACON. I look at it in this way: The act of the Commission under this authority is a legislative act which has been delegated to by Congress, and it has the same effect as if Congress itself had passed an act to that effect. Hence it is obligatory upon every citizen of the United States, and nobody could recover any damages in consequence of it any more than under any other act of Congress which may subsequently be determined to be unconstitutional by the Supreme Court.

The **CHAIRMAN.** Have you taken this view of the subject, Mr. Bacon? Suppose that the view that you have expressed here should become law and a railway company without any legislation has its right to enjoin the going into effect of that rate and proceed by the ordinary process of injunction in the methods that we now have of administering justice. According to statements which you have made here it takes from four to six years to conclude a case of that kind.

Mr. BACON. I think it does; yes, sir.

The **CHAIRMAN.** Heretofore, and it will be the same hereafter in all human probability if present methods are determined upon, and that at the end, we will say of four years, an act of the Commission is sustained. Now what remedy under those circumstances will the shipper have except it be by an individual suit against the railroad company to make his recoveries? Will he have any?

Mr. BACON. I do not think the shipper will have any need—

The **CHAIRMAN.** Will he not have under the provisions of the bill you referred to?

Mr. BACON. The shipper, in the first place, is going to put himself in the position where he can not suffer loss on either side, and consequently he will not be in a position that he wants any recovery from anybody.

The **CHAIRMAN.** Perhaps that may be so, I do not know whether it is or not; but there is a class of shippers that does not have that, they ship their own grain, they ship their own cattle, there are scores of them, hundreds of them.

Mr. BACON. In the case of cattle that is the case to a considerable extent, but take the whole traffic of the country and it is not the case in 5 per cent of the tonnage of the country.

The **CHAIRMAN.** Probably not.

Mr. MANN. I guess they would always find some one who would be willing to ship and buy and not lay up money in the savings bank.

Mr. BACON. Yes; if their capital would admit of it, but, as I say, the capital invested in this business of buying and selling the products of the country is usually very small, and the difference of a few cents a hundred pounds on grain or cattle or anything of that kind would ruin 99 per cent of the men in the business in the course of a year; they are absolutely debarred from taking any risk of that kind to any appreciable extent.

Mr. MANN. You are speaking particularly of the grain trade?

Mr. BACON. No; all classes of farm products.

Mr. MANN. That is largely grain trade.

Mr. BACON. No; that is only one. Cotton is larger than grain. Fruit is growing to be an immense article of production; live stock is another. I could name you probably a dozen articles of equal importance with grain in the traffic of the country.

Mr. BACON. The shipper in any case protects himself by adding the freight that he has either paid or is liable to pay into the cost of the goods, the price of the goods which he handles when he sells them, the same as the cotton buyer or the grain buyer or the cattle buyer takes it out in advance from the producer of whom he purchases those products in the country.

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Mr. MANN. I am inclined to think, under the decisions of the court, that he might have.

Mr. BACON. That is a legal question; but if that is the case, the shipper would protect himself in the same way I have previously indicated.

Mr. MANN. In that event there is no possible objection. If the shipper did not protect himself in such cases, there is no object in putting the rate into effect so far as the consumer is concerned.

Mr. BACON. I look at it in this way: The act of the Commission under this authority is a legislative act which has been delegated to it by Congress, and it has the same effect as if Congress itself had passed an act to that effect. Hence it is obligatory upon every citizen of the United States, and nobody could recover any damages in consequence of it any more than under any other act of Congress which may subsequently be determined to be unconstitutional by the Supreme Court.

The **CHAIRMAN.** Have you taken this view of the subject, Mr. Bacon? Suppose that the view that you have expressed here should become law and a railway company without any legislation has its right to enjoin the going into effect of that rate and proceed by the ordinary process of injunction in the methods that we now have of administering justice. According to statements which you have made here it takes from four to six years to conclude a case of that kind.

Mr. BACON. I think it does; yes, sir.

The **CHAIRMAN.** Heretofore, and it will be the same hereafter in all human probability if present methods are determined upon, and that at the end, we will say of four years, an act of the Commission is sustained. Now what remedy under those circumstances will the shipper have except it be by an individual suit against the railroad company to make his recoveries? Will he have any?

Mr. BACON. I do not think the shipper will have any need—

The **CHAIRMAN.** Will he not have under the provisions of the bill you referred to?

Mr. BACON. The shipper, in the first place, is going to put himself in the position where he can not suffer loss on either side, and consequently he will not be in a position that he wants any recovery from anybody.

The **CHAIRMAN.** Perhaps that may be so, I do not know whether it is or not; but there is a class of shippers that does not have that, they ship their own grain, they ship their own cattle, there are scores of them, hundreds of them.

Mr. BACON. In the case of cattle that is the case to a considerable extent, but take the whole traffic of the country and it is not the case in 5 per cent of the tonnage of the country.

The **CHAIRMAN.** Probably not.

Mr. MANN. I guess they would always find some one who would be willing to ship and buy and not lay up money in the savings bank.

Mr. BACON. Yes; if their capital would admit of it, but, as I say, the capital invested in this business of buying and selling the products of the country is usually very small, and the difference of a few cents a hundred pounds on grain or cattle or anything of that kind would ruin 99 per cent of the men in the business in the course of a year; they are absolutely debarred from taking any risk of that kind to any appreciable extent.

Mr. MANN. You are speaking particularly of the grain trade?

Mr. BACON. No; all classes of farm products.

Mr. MANN. That is largely grain trade.

Mr. BACON. No; that is only one. Cotton is larger than grain. Fruit is growing to be an immense article of production; live stock is another. I could name you probably a dozen articles of equal importance with grain in the traffic of the country.

every right to protect all rights of property and leave it in such situation that the Commission can go ahead performing its duties as it has heretofore with a great deal more speed before the courts because we have got an act now that will speed the cases. Take the cattle raisers' case, which I consider the most important that has ever been brought before the Commission, certainly it is the most important case in the West. We have used all sorts of diligence, and so has the Commission, to try that case. It has been impossible. The railroads have been "Johnny on the spot," and so have I. We have produced our witnesses and tried the case in a most speedy manner. A brief has been prepared consisting of 20,000 pages. That takes a good long time to prepare. I said I would undertake to prepare it in a month. Judge Baxter, representing the railroads, said he would undertake to prepare his brief in a month. Now, as soon as that is done, it takes some time to hear such a case. It must be heard fully and argued. But we undertake to say that it can be submitted and argued by the 1st of May. That is just as quick as you can expect to reach such an important case as that.

If the Commission decides that case in our favor I expect to have a decision of the Supreme Court by next November. I expect to have it submitted to the Supreme Court at the October term, if the railroads refuse to obey the order, and get a decision before the October term adjourns. Gentlemen, it is the lawyers in these cases that have delayed them more than any others, and the record will show it. A great many of the cases heretofore have been delayed in the courts. Now, I say the remedy, the proceedings, the machinery, everything, is in working order to protect everybody by giving the power to the Commission, which can be given in 75 words; and if this committee will appoint its best lawyers, or two of its best lawyers and its chairman, and ask any of these railroad attorneys who are desirous, as they say they are, of securing this power and yet having a reasonable protection, to appoint one of their best attorneys who is familiar with this matter, the shippers, I am sure, will be willing to risk their side in my hands, and we can go to the Attorney-General and say: "You can prepare a bill in a hundred words that will give the protection and right desired."

Mr. ADAMSON. Do you not think these associations would make better speed if they would do like your cattle association has done, employ a good lawyer?

Mr. COWAN. We haven't got the money. It is costing us \$10,000 or \$12,000 to try that case.

Mr. ADAMSON. A great many of them have the money.

Mr. COWAN. No; a business organization is generally the poorest kind of an organization in the world, and if anybody suggests that they send a man to Congress they think somebody is looking for a soft job.

Mr. ADAMSON. Judging from what some of these associations represent in the way of business concerns it seems to me that they ought to be able to raise money enough to employ a good lawyer.

Mr. BACON. I would like to file with the clerk of the committee, to be made a part of the record, a list of the associations now associated in the movement to secure this legislation. I have not the list with me.

(Thereupon, at 4.45 o'clock, the committee adjourned.)

t of commercial, mercantile, manufacturing, and agricultural organizations associated in the movement to secure legislation giving greater effectiveness to the interstate commerce act.

y conferring authority upon the Interstate Commerce Commission, upon full hearing of any formal complaint, to prescribe reasonable and equitable rates to be substituted by the carrier in place of those found to be unreasonable or discriminative; the order of the Commission in such case to become operative upon due notice to the carrier and so continue until set aside by the court of last resort, unless upon review in the circuit court of the United States it is found that such order clearly proceeds upon some error of law.]

NATIONAL AND SECTIONAL ORGANIZATIONS.

American Shippers' Association.
 American Short-Horn Breeders' Association.
 Carriage Builders' National Association.
 Cattle growers' Interstate Executive Committee.
 Central Yellow Pine Association (comprising the southern States of the Mississippi Valley).
 Coal Shippers' Association.
 Colorado and Wyoming Lumber Dealers' Association.
 Eastern Washington and Northern Idaho Lumber Manufacturers' Association.
 Grain Dealers' Union of Southwestern Iowa and Northwestern Missouri.
 Grain Dealers' National Association.
 Hardwood Manufacturers' Association of the United States.
 Iowa-Nebraska Wholesale Grocers' Association.
 Millers' National Association.
 Millers' National Federation.
 Millinery Jobbers' Association.
 Mississippi and Louisiana Lumber Dealers' Association.
 Mississippi Valley Lumbermen's Association.
 National Association of Manufacturers.
 National Board of Trade.
 National Dining Table Association.
 National Wholesale Druggists' Association.
 National Farmers' Exchange.
 National Grange, Patrons of Husbandry.
 National Hardware Association.
 National Retail Hardware Dealers' Association.
 National Hay Association.
 National League of Commission Merchants.
 National Live Stock Association.
 National Live Stock Exchange.
 National Lumber Manufacturers' Association.
 National Wholesale Lumber Dealers' Association.
 National Paint, Oil and Varnish Association.
 National Wool Growers' Association.
 National Retail Grocers' Association.
 New England Grain Dealers' Association.
 New England Granite Manufacturers' Association.
 New England Shoe and Leather Association.
 North Carolina Pine Association (comprising North and South Carolina and Virginia).
 Northwestern Manufacturers' Association.
 Northwestern Lumbermen's Association (comprising Minnesota, Iowa, North Dakota, and South Dakota).
 Pacific Coast Hardware and Metal Association.
 Pacific Coast Jobbers and Manufacturers' Association.
 Pacific Coast Lumber Manufacturers' Association.
 Paint Grinders' Association of the United States.
 Southeastern Cotton Buyers' Association (comprising Alabama, Georgia, North and South Carolina).
 Southeastern Millers' Association.
 Southern Hardware Jobbers' Association.
 Southern Lumber Manufacturers' Association.
 Southern Supply and Machinery Dealers' Association.
 Southwestern Kansas and Oklahoma Implement and Hardware Dealers' Association.

Southwestern Lumbermen's Association (comprising Kansas, Missouri, and Oklahoma).
 Southwestern Mercantile Association.
 Trans-Mississippi Commercial Congress.
 Travelers' Protective Association of America.
 Western Association of Pine Shippers (comprising Washington, Oregon, Idaho and Montana).
 Western Fruit Jobbers' Association.
 Western Retail Implement and Vehicle Dealers' Association (comprising Kansas, Missouri, Colorado, Oklahoma, and Indian Territory).
 Western Retail Lumbermen's Association.
 Western Merchants and Manufacturers' Association.
 Western Association of Shoe Wholesalers.
 Winter Wheat Millers' League.
 Wholesale Saddlery Association of the United States.

STATE AND LOCAL ORGANIZATIONS.

ALABAMA.

Birmingham Board of Trade.
 Birmingham Commercial Club.
 Huntsville Chamber of Commerce.
 Huntsville Wholesale Grocers' Association.
 Mobile Commercial Club.

ARKANSAS.

Arkansas State Board of Trade.
 Fort Smith Traffic Bureau.
 Gentry Fruit Growers' Association.
 Judsonia Fruit and Vegetable Growers' Association.
 Little Rock Board of Trade.
 Little Rock Merchants' Freight Bureau.
 Texarkana Commercial Club.
 Texarkana Freight Bureau.
 Texarkana Wholesale Grocers' Association.

CALIFORNIA.

Associated Wholesale Grocers of California.
 California State Board of Trade.
 California State Grange, Patrons of Husbandry.
 Manufacturers and Producers' Association of California.
 Southern California Fruit Exchange.
 Southern California Retail Hardware and Implement Association.
 Claremont Citrus Union.
 Highland Orange Growers' Association.
 Humboldt County Chamber of Commerce, Eureka.
 Indian Hill Citrus Union, North Pomona.
 Associated Jobbers of Los Angeles.
 Los Angeles Board of Trade.
 Los Angeles Chamber of Commerce.
 Los Angeles Merchants and Manufacturers' Association.
 Oakland Board of Trade.
 Oakland Merchants' Exchange.
 Pomona Board of Trade.
 Pomona Fruit Growers' Exchange.
 Porterville Board of Trade.
 Sacramento Board of Trade.
 Sacramento Chamber of Commerce.
 San Antonio Fruit Exchange, Pomona.
 San Bernardino Board of Trade.
 San Bernardino County Fruit Exchange, Colton.
 San Diego Chamber of Commerce.
 San Francisco Chamber of Commerce.
 San Francisco Merchants' Association.
 San Francisco Merchants' Credit Association.

Santa Barbara County Chamber of Commerce, Santa Barbara.
Santa Barbara Lemon Growers' Exchange.
Sulare County Citrus Fruit Exchange, Porterville.
Whittier Citrus Union.

COLORADO

Colorado and Wyoming Lumber Dealers' Association.
Colorado State Realty Association.
Colorado City Chamber of Commerce.
Colorado Springs Chamber of Commerce.
Denver Chamber of Commerce and Commercial Club.
Denver Manufacturers' and Jobbers' Transportation Association.
Denver Real Estate Exchange.
Fort Collins Sheep Feeders' Association.
Grand Junction Chamber of Commerce.
Grand Junction Liberty League.
Gunnison County Stock Growers' Association, Gunnison.
Lincoln County Cattle Growers' Association, Hugo.
Lincoln and Elbert County Wool Growers' Association, Hugo.
Roaring Fork and Eagle River Stock Growers' Association, Carbondale.

CONNECTICUT.

Connecticut State Grange, Patrons of Husbandry.
Bridgeport Business Men's Association.
New Haven Chamber of Commerce.
Waterbury Business Men's Association.

DISTRICT OF COLUMBIA.

Washington Board of Trade.

FLORIDA.

Georgia Interstate Saw Mill Association (comprising Georgia and Florida)..

GEORGIA.

Georgia Interstate Saw Mill Association (comprising Georgia and Florida).
North Georgia Fruit Growers' Association.
Atlanta Chamber of Commerce.
Atlanta Freight Bureau.
Savannah Cotton Exchange.

IDAHO.

Eastern Washington and Northern Idaho Lumber Manufacturers' Association.
Idaho Lumber Dealers' Association.
Idaho Sheep and Wool Growers' Association.

ILLINOIS.

Illinois Grain Dealers' Association.
Illinois Live Stock Breeders' Association.
Illinois Lumber Dealers' Association.
Illinois Manufacturers' Association.
Illinois Millers' State Association.
Illinois State Grange, Patrons of Husbandry.
Southern Illinois Millers' Association.
Travelers' Protective Association of Illinois.
Anna Fruit Growers' Association.
Belleville Commercial Club.
Bloomington Business Men's Association.
Cairo Board of Trade.
Chicago Branch, National League of Commission Merchants.
Chicago Board of Trade.
Chicago Builders and Traders Exchange.

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Emporia Business Men's Association.
Howard Commercial Club.
Hutchinson Commercial Club.
Lindsborg Commercial Club.
Russell Commercial Club.
Salina Commercial Club.
Topeka Commercial Club.
Wellington Business Men's Club.
Wichita Board of Trade.
Wichita Chamber of Commerce.
Wichita Commercial Club.
Wichita Traffic Bureau.

KENTUCKY.

Travelers' Protective Association of Kentucky.
Covington Business Men's Club.
Hartford Commercial Club.
Louisville Branch, National League of Commission Merchants.
Louisville Lumbermen's Club.

LOUISIANA.

Mississippi and Louisiana Lumber Dealers' Association.
New Orleans Branch, National League of Commission Merchants.
New Orleans Board of Trade.
New Orleans Live Stock Exchange.
Ponchatoula Farmers' Association.

MARYLAND.

Baltimore Branch, National League of Commission Merchants.
Baltimore Chamber of Commerce.
Baltimore Lumber Exchange.
Baltimore Travelers and Merchants' Association.
Baltimore Tobacco Board of Trade.

MASSACHUSETTS.

Massachusetts State Board of Trade.
Massachusetts State Grange, Patrons of Husbandry.
Boston Associated Board of Trade (representing 23 affiliated organizations).
Boston Fruit and Produce Exchange.
Boston Branch, National League of Commission Merchants.
Brockton Board of Trade.
Cambridge Citizens' Trade Association.
Fitchburg Merchants' Association.
Haverhill Board of Trade.
Lowell Builders' Exchange.
Lowell Board of Trade.
Mansfield Board of Trade.
Norwood Business Association and Board of Trade.
Somerville Board of Trade.
Worcester Board of Trade.

MICHIGAN.

Michigan Dairymen's Association.
Michigan Grain Dealers' Association.
Michigan Hay Association.
Michigan Merino Sheep Breeders' Association.
Michigan Retail Lumber Dealers' Association.
Michigan State Grange, Patrons of Husbandry.
Michigan State Millers' Association.
Southern Michigan Fruit Association.
Albion Farmers' Club.
Detroit Branch, National League of Commission Merchants.
Detroit Merchants and Manufacturers' Exchange. (Merged into Detroit Board of Commerce.)
Grand Rapids Board of Trade.
Saginaw Lumber Dealers' Association.

MINNESOTA.

Minnesota Millers' Club.
 Minnesota Municipal and Commercial League (representing over fifty communities).
 Minnesota Retail Grocers and General Merchants' Association.
 Minnesota Retail Hardware Association.
 Minnesota Shippers and Receivers' Association.
 South Dakota and Southwest Minnesota Millers' Club.
 South Dakota, Southwest Minnesota, and Northwest Iowa Retail Implement Dealers' Association.
 Duluth Board of Trade.
 Duluth Commercial Club.
 Duluth Produce and Fruit Exchange.
 Duluth Retail Grocers' Association.
 Duluth Branch, L. S. Retail Meat Dealers' Association.
 Mankato Board of Trade.
 Minneapolis Branch, National League of Commission Merchants.
 Minneapolis Chamber of Commerce.
 Minneapolis Millers' Club.
 Red River Millers' Club, Moorhead. (See North Dakota.)
 Rochester Union, American Society of Equity.
 St. Paul Board of Trade.
 St. Paul Chamber of Commerce.
 St. Paul Commercial Club.
 St. Paul Produce Exchange.
 South St. Paul Live Stock Exchange.
 Winona Board of Trade.

MISSISSIPPI.

Mississippi and Louisiana Lumber Dealers' Association.
 Aberdeen Group Commercial Association, West Point.
 Laurel Board of Trade.
 Natchez Cotton and Merchants' Exchange.
 Vicksburg Cotton Exchange.

MISSOURI.

Grain Dealers' Union of Southwest Iowa and Northwest Missouri.
 Missouri Retail Merchants' Association.
 Missouri Retail Hardware Association.
 Travelers' Protective Association of Missouri.
 Gashland Fruit Growers' Association.
 Jefferson City Commercial Club.
 Kansas City Board of Trade.
 Kansas City Hay Dealers' Association.
 Kansas City Manufacturers and Merchants' Association.
 Kansas City Millers' Club.
 Pierce City Fruit Growers' Association.
 St. Joseph Commercial Club.
 St. Louis Builders' Exchange.
 St. Louis Business Men's League.
 St. Louis Cotton Exchange.
 St. Louis Fruit and Produce Exchange.
 St. Louis Lumber Dealers' Association.
 St. Louis Manufacturers' Association.
 St. Louis Merchants' Exchange.
 St. Louis Millers' Club.
 St. Louis Stove Manufacturers' Association.

MONTANA.

Eastern Montana Wool Growers' Association.
 Montana Stock Growers' Association.
 North Montana Wool Growers' Association.
 Great Falls Retail Merchants' Exchange.

NEBRASKA.

Iowa-Nebraska Wholesale Grocers' Association.
Millers' Club of Nebraska.
Nebraska Lumber Dealers' Association.
Nebraska Retail Merchants' Association.
Nebraska Stock Growers' Association.
South Nebraska Millers' Club.
Fremont Commercial Club.
Lincoln Commercial Club.
Lincoln Retail Grocers' Association.
Omaha Branch, National League of Commission Merchants.
Omaha Grain Exchange.
Omaha Produce Exchange.
South Omaha Live Stock Exchange.

NEW HAMPSHIRE.

New Hampshire State Grange, Patrons of Husbandry.

NEW JERSEY.

New Jersey Lumbermen's Protective Association.
New Jersey State Grange, Patrons of Husbandry.
Jersey City Board of Trade.
Newark Board of Trade.

NEW MEXICO.

Las Vegas Commercial Club.

NEW YORK.

New York State Fruit Growers' Association.
New York State Grange, Patrons of Husbandry.
New York State Millers' Association.
New York State Retail Lumber Dealers' Association.
Albany Chamber of Commerce.
Auburn Business Men's Association.
Brooklyn, United Retail Grocers' Association.
Buffalo, Black Rock Manufacturers' Association.
Buffalo Branch, National League of Commission Merchants.
Buffalo Chamber of Commerce.
Buffalo Lumber Exchange.
Jamestown Manufacturers' Association.
Lockport Board of Trade.
Middletown Business Men's Association.
New York Cotton Exchange.
New York Fruit and Produce Trade Association.
New York Lumber Trade Association.
New York Manufacturers' Association.
New York North Side Board of Trade.
New York Stationers' Board of Trade.
Rochester Chamber of Commerce.
Utica Chamber of Commerce.

NORTH CAROLINA.

North Carolina Pine Association (comprising North and South Carolina and Virginia).
Charlotte Shippers' Association.
East Carolina Truck and Fruit Growers' Association, Wilmington.
Wilmington Chamber of Commerce.
Wilmington Merchants' Association.

NORTH DAKOTA.

Red River Millers' Club (comprising North Dakota and northwest Minnesota).

OHIO.

Miami Valley and Western Ohio Grain Dealers' Association.
 Middle Ohio Grain Dealers' Association.
 Northwest Ohio Grain Dealers' Association.
 Northwest Ohio Millers and Grain Dealers' Association.
 Ohio Shippers' Association.
 Ohio Grain Dealers' Association.
 Ohio Millers' State Association.
 Ohio State Association, Patrons of Industry.
 Ohio State Grange, Patrons of Husbandry.
 Ohio State Hardware Association.
 Western Ohio Grain Dealers' Association.
 Cincinnati Chamber of Commerce.
 Cincinnati Business Men's Club.
 Cincinnati Lumbermen's Club.
 Cincinnati Manufacturers' Club.
 Cincinnati Receivers and Shippers' Association.
 Cleveland Chamber of Commerce.
 Cleveland Retail Coal Dealers' Association.
 Columbus Board of Trade.
 Dayton Commercial Club.
 Massillon Board of Trade.
 Newark Board of Trade.
 Portsmouth Board of Trade.
 Sandusky Chamber of Commerce.
 Toledo Builders' Exchange.
 Toledo Produce Exchange.
 Youngstown Builders' Exchange.

OKLAHOMA.

Oklahoma Chamber of Commerce, Oklahoma City.
 Oklahoma Live-Stock Association.
 Oklahoma Millers' Association.
 Oklahoma Traffic Association.
 Southwest Kansas and Oklahoma Implement and Hardware Dealers' Association.

OREGON.

Oregon Live-Stock Breeders' Association.
 Portland Board of Trade.
 Portland Chamber of Commerce.
 Portland Manufacturers' Association of the Northwest.

PENNSYLVANIA.

Pennsylvania Lumberman's Association.
 Pennsylvania Millers' State Association.
 Pennsylvania State Grange, Patrons of Husbandry.
 Philadelphia Board of Trade.
 Philadelphia Bourse.
 Philadelphia Commercial Exchange.
 Philadelphia Commercial Museum.
 Philadelphia Hardware Merchants and Manufacturers' Association.
 Philadelphia Lumbermen's Exchange.
 Philadelphia Manufacturers' Club.
 Philadelphia Produce Exchange.
 Philadelphia Trades League.
 Pittsburg Chamber of Commerce.
 Pittsburg Grain and Flour Exchange.
 Pittsburg Branch, National League of Commission Merchants.
 Pittsburg Wholesale Lumber Dealers' Association.
 Reading Board of Trade.
 Scranton Board of Trade.

RHODE ISLAND.

Lumber Dealers' Association of Rhode Island.
Rhode Island State Grange, Patrons of Husbandry.
Pawtucket Merchants' Association.
Pawtucket, Southern Woodlawn Improvement Society.

SOUTH CAROLINA.

North Carolina Pine Association (comprising North and South Carolina and Virginia).
Anderson Chamber of Commerce.
Charleston Bureau of Freight and Transportation.
Charleston Chamber of Commerce.
Charleston Commercial Club.
Charleston Cotton Exchange.
Columbia Chamber of Commerce.
Gaffney Business Men's Club.
Georgetown Board of Trade.
Piedmont Wholesale Grocers' Association, Anderson.
Spartanburg Chamber of Commerce.

SOUTH DAKOTA.

South Dakota and Southwestern Minnesota Millers' Club.
South Dakota, Southwestern Minnesota, and Northwestern Iowa Retail Implement Dealers' Association.
Western South Dakota Stock Growers' Association.
Deadwood Business Club.

TENNESSEE.

Chattanooga Retail Grocers' Association.
Memphis Builders' Exchange.
White County Live Stock Association, Sparta.

TEXAS.

Texas Cattle Raisers' Association.
Texas Cotton Growers' Association.
Texas Grain Dealers' Association.
Texas Live Stock Association.
Texas Lumbermen's Association.
Texas Millers' Association.
Travelers' Protective Association of Texas.
Dallas Commercial Club.
Dallas Freight Bureau.

UTAH.

Utah Live Stock Association.
Utah Wool Growers' Association.
Ogden, Weber Club (The Business Men's Association).

VERMONT.

Vermont Jersey Cattle Club.
Vermont State Grange, Patrons of Husbandry.
Vermont Sugar Makers' Association.

VIRGINIA.

North Carolina Pine Association (comprising North and South Carolina and Virginia).
Danville Commercial Association.
Danville Tobacco Association.
Richmond Branch, National League of Commission Merchants.
Richmond Tobacco Exchange.

WASHINGTON.

Eastern Washington and Northern Idaho Lumber Manufacturers' Association
 Washington State Grange, Patrons of Husbandry.
 Chewelah Commercial Club.
 Colville Commercial Club.
 Dayton Commercial Association.
 Franklin County Chamber of Commerce, Pasco.
 Grays Harbor Commercial Club, Cosmopolis.
 Republic Chamber of Commerce and Mines.
 Ritzville Chamber of Commerce.
 Seattle Manufacturers' Association.
 Spokane Chamber of Commerce.
 Spokane Jobbers and Shippers' Association.
 Spokane Lumbermen's Association.
 Tacoma Chamber of Commerce and Board of Trade.
 Tacoma Retail Grocers' Protective Association.
 Walla Walla Commercial Club.

WEST VIRGINIA.

Charlestown Board of Trade.

WISCONSIN.

Wisconsin Cheese Makers' Association.
 Wisconsin Grain Dealers' Association.
 Wisconsin Retail Hardware Association.
 Wisconsin Retail Lumber Dealers' Association.
 Wisconsin State Grange, Patrons of Husbandry.
 Wisconsin State Millers' Association.
 La Crosse Board of Trade.
 La Crosse Manufacturers and Jobbers' Union.
 Marinette General Improvement Association.
 Marinette County Good Roads Association.
 Milwaukee Association of Steam and Hot Water Heating Engineers.
 Milwaukee Branch, National League of Commission Merchants.
 Milwaukee Builders and Traders' Exchange.
 Milwaukee Chamber of Commerce.
 Milwaukee Merchants and Manufacturers' Association.
 Milwaukee Millers' Association.
 Milwaukee Retail Grocers' Association.
 Muscoda Dairy Board, Spring Green.
 Peshtigo Good Roads Association.
 Superior Retail Grocers' Protective Association.

WYOMING.

Colorado and Wyoming Lumber Dealers' Association.
 Eastern Wyoming Wool Growers' Association.
 Saratoga Board of Trade.

The legislatures of the following States have memorialized Congress within the past two years to enact legislation of similar character, viz: Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, South Dakota, Wisconsin.

National and sectional organizations	62
State and local organizations, representing 44 States and Territories.....	401
Total.....	463
State granges, Patrons of Husbandry.....	17
Aggregate.....	480

The State and local organizations enumerated in the foregoing, including 17 State granges of the Patrons of Husbandry, are situated as follows:

PROPOSED AMENDMENT OF INTERSTATE-COMMERCE LAW. 403

Alabama.....	5	New York.....	22
Arkansas.....	9	North Carolina.....	4
California.....	32	North Dakota.....	1
Colorado.....	13	Ohio.....	27
Connecticut.....	4	Oklahoma.....	4
District of Columbia.....	1	Oregon.....	4
Georgia.....	5	Pennsylvania.....	18
Idaho.....	2	Rhode Island.....	4
Illinois.....	27	South Carolina.....	10
Indiana.....	20	South Dakota.....	4
Iowa.....	13	Tennessee.....	3
Kansas.....	20	Texas.....	9
Kentucky.....	5	Utah.....	3
Louisiana.....	4	Vermont.....	3
Maryland.....	5	Virginia.....	4
Massachusetts.....	15	Washington.....	15
Michigan.....	13	West Virginia.....	1
Minnesota.....	21	Wisconsin.....	20
Mississippi.....	4	Wyoming.....	2
Missouri.....	20		
Montana.....	4	Total.....	418
Nebraska.....	12	National and sectional organiza-	
New Hampshire.....	1	tions.....	62
New Jersey.....	4		
New Mexico.....	1	Aggregate.....	480

WASHINGTON, D. C., January 25, 1905.

HON. W. P. HEPBURN,

*Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.*

SIR: In support of the oral statement which I made before your committee this afternoon, to the effect that the net earnings of many of the railways of the country have produced a return on the capital stock of the several companies ranging from 10 to 20 per cent, I beg leave to present the following detailed statement showing the percentage on the capital stock of the railway companies mentioned produced by the net earnings of the companies mentioned after paying fixed charges, including taxes and interest on outstanding bonds, during the years ending June 30, 1902 and 1903, as reported in the Wall Street Journal, a daily newspaper published in the city of New York, devoted especially to financial interests. I also include several companies whose net earnings have produced a return of between 7 and 10 per cent on their capital stock during the years mentioned. In cases where blanks occur, the return is not given in the journal mentioned.

	1902.		1903.	
	Pre-ferred.	Com-mon.	Pre-ferred.	Com-mon.
	Percent.	Percent.	Percent.	Percent.
Atchison, Topeka and Santa Fe.....	5	9.66	5	8
Atlantic Coast Line.....	5	9.4	5	7.93
Baltimore and Ohio.....			4	10.23
Buffalo, Rochester and Pittsburg.....	10.52	10.52	12.4	12.4
Central of New Jersey.....				7.78
Chicago and Eastern Illinois.....	6	14.4	6	23.5
Chicago and Northwestern.....	14.6	14.6	14.6	14.6
Chicago, Indianapolis and Louisville.....	4	6.53	4	7.75
Chicago, Milwaukee and St. Paul.....	9.19	9.19	9.9	9.9
Chicago, Rock Island and Pacific.....		12		8.2
Chicago, St. Paul, Minneapolis and Omaha.....			16.49	9.49
Hocking Valley.....	6.56	6.56	7	7
Illinois Central.....		12.86		11.29
Lehigh Valley.....			10	4.9
Louisville and Nashville.....				10.35
Minneapolis and St. Louis.....	5	8.27	5	5.3
Minneapolis, St. Paul and Sault Ste. Marie.....	7	7.83	7	7
Missouri Pacific.....		8.45		10
Mobile and Ohio.....				14
New York, New Haven and Hartford.....		8.71		8.84
Norfolk and Western.....	4	6.36	4	8.9
Pacific Coast.....			5	10.6
Pennsylvania Railroad.....		12.8		9.2
Philadelphia and Erie.....	7	4.20	7	7.87
Union Pacific.....			4	10.40

The dividends declared by the several companies mentioned have in most cases been less than, and in some cases very much less than, the percentage earned as shown in the above figures, the surplus having been applied in some cases to betterments and permanent improvements, and in other cases to an accumulated surplus fund. The aggregate amount of such surplus fund accumulated by all the railways of the United States during the four years ending June 30, 1903, as shown in the annual reports on railway statistics of the Interstate Commerce Commission, amounts to \$358,440,000. The amount reported as having been expended for permanent improvements during that period (when not included in operating expenses) was \$92,500,000. This amount added to the accumulated surplus makes an aggregate of \$450,940,000 derived from the net earnings of the railways of the country, in addition to the dividends declared and paid to stockholders.

Respectfully submitted.

E. P. BACON.

STATEMENT OF H. B. MARTIN, OF NEW YORK, NATIONAL SECRETARY OF THE AMERICAN ANTI-TRUST LEAGUE.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: In view of the short time at the disposal of the committee I respectfully ask permission to file a brief statement on behalf of the American Anti-Trust League and numerous commercial and agricultural organizations, including shippers, consumers, and producers from many States, who have presented petitions to Congress urging the enactment of H. R. 13778, the bill amending the interstate-commerce law, introduced by Representative Hearst, of New York.

The organizations and citizens who indorse the Hearst bill and urge its passage do so for the following reasons among others:

First. Because the bill empowers the Commission to fix freight rates when existing rates have been found by it to be unreasonable or discriminating.

Second. It prohibits change of rates without thirty days' notice to the Commission.

Third. Makes all its orders effective within thirty days after service and requires the Commission to decide every case within sixty days after it is closed.

Fourth. Unlike all other bills, it makes the execution of the law effective and expeditious by creating an interstate-commerce court, with exclusive jurisdiction to review all orders of the Commission and power to enforce them by contempt proceedings.

Fifth. This does away with double trials, and limits stays to cases found on hearings to be clearly unjust.

Sixth. No appeal lies to the Supreme Court unless either the commerce court or the Supreme Court certifies that a constitutional question is involved which ought to be reviewed, in which cases, however, no stay can be granted.

Seventh. It empowers the Commission to fix classification of freights that will be just and fair to all persons.

The opposition to this legislation regulating rates, as formulated by the railroad owners and their representatives, has substantially resolved itself to this:

They claim—

First. That Congress has no right to delegate to the Interstate Commerce Commission the power to fix rates.

Second. That Congress has no right to delegate to the courts the power to fix rates.

Third. That Congress itself can not fix railroad rates.

Fourth. Their logical conclusion and consistent contention is that the railroad managers alone have the right to fix rates, and thereby to fix the value of all the billions of dollars worth of movable property owned by the 80,000,000 people of the United States, who would thus be helpless in the hands of the few who own the highways.

Are the Interstate Commerce Committees of the House and Senate willing to accept this conclusion?

Is Congress itself willing to accept it?

Are the sovereign people of the United States willing to accept it?

The self-evident answer to these questions and to the untenable claims of the railroad managers is most emphatically "No."

The present system of private management of those great public highways, the interstate railroads, has been tried in the balance and found wanting. The

uses which have attended the system from the beginning to the present have become so aggravated that they are now intolerable, and the people are determined that a change must be made.

The power to fix the rates of transportation for the property and persons of 1,000,000 of people is too great a power to be safely trusted in the hands of any small clique of private individuals. This much is certain and settled in the mind of most intelligent American citizens outside the ranks of those who serve or share the railroad monopoly.

Every man's property, every man's labor, every man's livelihood, every man's hope of the future is at the mercy of the men who, with an eye solely to the increase of their own wealth and power, now control the public highways in derogation of public rights and in defiance of public law. This is a condition that can not and will not long be endured by the people.

There is a remedy for these evils arising from the private monopoly of the public highways. It is the high privilege, prerogative, and duty of this Congress of the United States to find and apply that remedy before the disease becomes so deep rooted to be removed.

It is also the privilege and duty of the citizens to suggest and to petition to Congress for the adoption of the reforms needed to cure the evils complained of.

To this end we have here presented to this committee and to Congress numerous petitions signed by many citizens, both shippers and consumers, from all parts of the United States in favor of the enactment into law of bill H. R. 13778, known as the "Hearst bill."

* * * * *

The objections against this line of legislation provided for in H. R. 13778, which are presented by the railroad men and their friends, are as I have before stated:

First. Because they claim it is unconstitutional for Congress to delegate its legislative power to fix rates to the Interstate Commerce Commission, a body appointed by the President, and thereby conferring the legislative power on the executive branch of the Federal Government and is unconstitutional. This is sufficiently answered by the decisions of the United States Supreme Court to the effect that the Commission is a legislative body and that Congress can delegate the rate-making power to it.

Second. Because they claim that the courts, by virtue of the provision allowing appeals from the orders of the Commission, would be in fact allowed to fix the rate, and that would be delegating a legislative power to the judicial branch of the Government and thereby disturbing the balance of powers between the legislative and judicial branches.

The sufficient answer to this is that all legislative acts are subject to judicial review as to their constitutionality; but that does not necessarily mean that Congress thereby delegates to the courts any part of its proper legislative power.

Third. They claim that Congress itself, although empowered to make rates, can not do so, because it is too complex a subject to be dealt with properly by so large a body of men, inexperienced in railroad affairs.

A sufficient answer to this is the fact that a Congress competent to enact so complicated a thing as a customs-tariff schedule is certainly qualified to enact a railroad freight and passenger schedule.

This argument and the fourth argument of the railroad managers, viz, that they alone are competent to fix just and reasonable freight and passenger rates, is akin to the old argument of the friends of monarchy and nobility, viz, that only the wealthy and well born are competent to govern. That all question of Government were, as the railroad managers now claim the rate question is, too deep and too complicated to be dealt with by the common people and their representatives in Congress. The claims of the monarchist proved to be utterly absurd; and the common sense of the people to-day emphatically repudiates the equally absurd claim to superior wisdom and virtue on the part of the railroad managers.

The fixing of just and reasonable rates is not so complex a matter as they would have us believe. It is the making of unjust discrimination and extortionate rates that is the complex and complicated things.

"It is the tangled web they weave
"When first they practice to deceive"

that makes the rate-making business look so complicated.

Ample evidence has been furnished to this committee and to Congress and to the United States Industrial Commission and the Interstate Commerce Commission of the enormous and dangerous abuses of the power to fix rates and control the rail highways when that power is exercised by the private individuals now owning and managing the roads.

That Government regulation of railroads must come is now admitted even by some of the representatives of the railway companies themselves who have appeared before this committee.

But they claim that by enforcing the existing interstate-commerce law all the evils of importance would be wiped out. From this opinion we emphatically dissent.

The abuses carried on through the manipulation of freight classifications would not be abolished by enforcing the existing interstate-commerce law.

The unfair advantage which the railroads have over the shipper and consumer through the almost intermediate delays by long-drawn out trials and appeals under the present system would not be abolished by the enforcement of the present law.

The private-car abuse is not reached through the present law.

A hundred different forms of outrageous secret discrimination and rebates are not reached by the existing law.

And above all, the giant evil of unjust, unfair, unreasonable, and extortionate rates can not be abolished by the enforcement of existing interstate-commerce law. The remedy for all these evils is more comprehensively and effectively provided in the Hearst bill than in any other bill now before Congress.

There has been much testimony and argument presented before this committee in behalf of the shippers and in behalf of the railroad companies; but there is another party besides these two, who is most vitally interested in Government regulation and control of railroads to the end that the admitted abuses and extortion I have enumerated should be put a stop to, and that party is the great body of 80,000,000 producers and consumers, on whom the whole burden of railroad freight and passenger charges finally falls.

It is in behalf of the 80,000,000 of unjustly overburdened consumers that I speak to-day.

That the burden so unjustly imposed on them by the railroads is very grievous is clear to everyone when we consider that the tax, in the form of railroad rates levied each year now amounts to about nineteen hundred millions of dollars. Approximately one-half of this, or nearly ten hundred millions, is clear profit to the railroad owners, and over five hundred millions of that profit is an excessive and extortionate charge.

This is an injustice so great as to be intolerable. Congress can and should put a stop to it.

When the private owners and managers of the railroads proceed to such lengths as this, in usurping the power to tax the citizens, it becomes the imperative duty of Congress to enact a law that will relieve the people of this enormous and unjust burden.

Not only do the railroads themselves levy this monopoly extortion of five hundred millions a year, but by the favoritism which they show to certain individuals and corporations they have built up numerous monopolistic trusts, who, as soon as they have secured control of the markets, proceed to levy another monopoly tax on the consumers almost as burdensome and more oppressive and ruinous than even the exactions of the railroads.

Fortunately for the nation, President Roosevelt, by the statements in his last message, shows that the people have reason to hope that the executive branch of the Government is ready to actively cooperate with Congress in remedying these evils by the enactment of the new laws so greatly needed to control the railways and correct their abuses.

There have been many examples furnished your committee by many witnesses of cases of unjust and unreasonable rates.

A typical case affecting directly the people of the National Capital and making the United States Government itself a victim is the rate on soft coal from points in West Virginia. I am informed that the rate from McDowell County points to Shenandoah Junction, about 200 miles, is \$1.60 per ton; from Shenandoah Junction to Washington, 60 miles, is also \$1.60 per ton, over 300 per cent higher. This is effective in keeping out competing coal that would, if the rate were fair, greatly reduce the cost of coal to all the consumers in Washington, including the Government itself.

To allow, as we have done, a few private individuals to secure absolute control of the main highways of the nation is to create an autocracy within the public which has already become more powerful than the Republic itself. Indeed, it is the common understanding in Washington to-day that the railroads will allow no bill to pass which does not suit them. A prominent Government official, testifying before the Senate committee a short time ago, said, "You cannot pass any bill regulating the railroads without the railroads' consent, and they will not consent."

The result of private control of railroads is commercial despotism. They defy Government, disobey the laws, and enforce their own decrees with ruthless regard of the rights of both shippers and consumers.

Railroad tariffs are both legally and essentially a tax levied on the whole people. In 1903 that tax levied on the nation by this handful of private individuals amounted to eighteen hundred and ninety million dollars—three times the amount of all the taxes levied by the Government of the United States.

In the language of ex-Governor Larrabee, of Iowa:

"Other tax laws of the United States are not changed, even in the slightest degree, without months of discussion by Congress, and after thorough investigation of all interests likely to be affected by the change; but this great transportation tax can be increased by this handful of men between two days, and is then so done without any consultation with those who are compelled to pay it, and any consideration for their interests.

"Nowhere else in the civilized world are a few irresponsible persons permitted to carry on a large public business like this, or vested with such tremendous powers of taxation without severe restrictions being placed upon them."

H. B. MARTIN,

1229 Pennsylvania Avenue NW., Washington, D. C.

STATEMENT BY JOSEPH NIMMO, JR., STATISTICIAN AND ECONOMIST.

JANUARY 19, 1905.

Mr. CHAIRMAN: Mr. G. Waldo Smith, of the New York Board of Trade and Transportation, who appeared before this committee on Tuesday the 17th instant, presented a petition from that board, in which was recommended "a joint special commission of Congress on interstate commerce to thoroughly investigate all problems involved, and to report their conclusions and recommendations by bill at the opening of the next Congress."

This is a subject in which I am deeply interested. I have for years urged the importance of such a Congressional investigation upon the trade bodies of the country and in the public press. Perhaps the most explicit of these recommendations is the one made in the *Railway Age* of January 31, 1902, from which I quote the following:

"It is somewhat astonishing that there has been but one such investigation as that here recommended since the advent of railroad transportation in this country, namely, the investigation of 1836. Since that time important changes have taken place in economic and commercial conditions of controlling force.

"We may profit very much in regard to this important subject from the example of Great Britain. The British Parliament began the investigation of the peculiar commercial, economic, and political aspects of tramways in the year 1801—more than one hundred years ago. Since the advent of steam railroads, about the year 1830, there have been many parliamentary investigations in Great Britain concerning the relations of the railroads to the public interests. The most notable of these were the investigations of 1840, 1844, 1846, 1852, 1865, 1872, 1881, 1888, and 1893-94. The printed report of the Commission of 1872 is a quarto volume of 1,189 pages, nearly as large as a Webster's Dictionary. The report of 1893-94 is also a quarto volume of nearly 700 pages. In these various reports all the more important commercial, economic, and political conditions governing the railroad transportation question in Great Britain have been investigated and reported upon. Theories and notions about railroad management and regulations have also been considered and reported upon—some of them quite as visionary and as absurd as certain of those which now command public attention in this country. As the result of these elaborate parliamentary inquiries, abuses of various sorts have been abated, mistaken ideas in regard to the management and regulation of the railroads of Great Britain have been cor-

rected, sensible remedial expedients have been adopted, many questions at issue have been amicably settled, and public discontent has been allayed. Thus, British statesmen, following the historic example of their illustrious predecessors, have from time to time, in the language of Mr. Gladstone, 'submitted themselves to the lessons of experience and to the lessons of the hour.'

"How different has been the course pursued toward the railroads of this country by our National Government. With an area (exclusive of Alaska and our insular possessions) twenty-five times that of the United Kingdom of Great Britain and Ireland, and with a railroad mileage of over 200,000 miles as against 22,000 miles in Great Britain, as before stated, we have had only one Congressional investigation of the railroad question, namely, the Senate inquiry of 1886, which resulted in the interstate-commerce act of February 4, 1887.* That investigation related to the cure of certain causes of complaint. What is now needed is an inquiry relating to the organization of our vast American railroad system, its relationships to the social, commercial, and industrial interests of the country, the benefits which it has conferred, the evils which have incidentally arisen in the course of its development, and the proper course to be pursued in the attempt to cure those evils. This appears to be the supreme duty of the hour. It is a duty which can not be evaded if legislation in regard to the most important material interests of this country is to be based upon the certain lessons of experience, and not upon the uncertain leadings of public clamor.

"If the eminently wise and wholesome example of Great Britain is to be followed the proposed inquiry will involve many hundred and even thousands of inquiries. Without any attempt to formulate a definite scheme of investigation, I submit, offhand, some of the topical features of such a Congressional investigation."

[Here follow thirty-six specific inquiries relating to the economy of transportation by rail and the relations of the railroads to the general public interests, but which need revision in order to meet changed conditions.—N.]

In view of the fact that the commercial, economic, and constitutional aspects of such Congressional inquiry as that here recommended have been pretty thoroughly discussed at the present hearings, I shall invite your attention only to certain inquiries bearing upon fundamental principles of our form of Government, which inquiries, in my judgment, relate to the most important aspect of the whole question at issue. The nature and scope of these inquiries are indicated as follows:

In order to avoid the slightest misrepresentation as to the attitude assumed by the Interstate Commerce Commission, I quote the following from page 10 of its seventh annual report, dated December 1, 1893:

"To give each community the rightful benefit of location; to keep different commodities on an equal footing, so that each shall circulate freely and in natural volume, and to prescribe schedule rates which shall be reasonably just to both shipper and carrier is a task of vast magnitude and importance. In the performance of that task lies the great and permanent work of public regulation."

The Utopian idea of placing the conduct of the commercial and transportation interests of this country under the supervision and control of an administrative bureau of the National Government constitutes a striking illustration of what is commonly meant by "bureaucratic government."

During the last two thousand years there has been going on among the foremost nations of the globe a struggle between the advocates of dispensing justice in the conduct of the interaction of commercial and industrial forces through the exercise of the judicial power and through the exercise of autocratic administrative authority, the latter function being usually performed by a bureau clothed with executive authority or with delegated legislative authority. This latter method—bureaucracy—was the potential cause of the downfall of the Roman Empire. The only civilized country in which it now prevails as an unrestrained expression of governmental authority is Russia, where the people are to-day clamoring for its suppression, for the reason that it constitutes an intolerable form of despotism. In England the autocratic exercise of the power of controlling the course of the development of the commercial and industrial interests of the country by autocratic governmental authority was known as a "dispensing power." This form of despotism was abolished as the result

* The Windom Senate committee report of 1873 was essentially the result of an inquiry in regard to the construction or improvement of certain water routes.

of the British revolution of 1688. The men who framed our present form of government utterly repudiated any form of autocratic power. But, ever and anon, men oblivious to the lessons of the political experiences of the civilized nations of the globe during the last two thousand years announce in this and in other countries some new scheme for placing the commercial and industrial interests of the people under bureaucratic rule. This is the controlling idea of the Quarles-Cooper bill.

In view of the foregoing, I desire to express the earnest hope that this committee will perceive the present importance of a thorough Congressional investigation of the railroad transportation question and that it may be led to institute such inquiry in all its political, commercial, and economic bearings.

For thirty years as officer of the Government, and in my private capacity as statistician and economist, I have been a laborious investigator of the railroad problem in this country, and that experience has impressed me with a sense of the importance of an investigation of the subject by a Congressional committee clothed with all the powers which the governmental authority confers for the discovery of facts not accessible to the private citizen.

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HEARINGS
BEFORE THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE
HOUSE OF REPRESENTATIVES
ON
H. R. 12767 AND 16977,
TO AMEND THE INTERSTATE-COMMERCE LAW RELATING TO PRIVATE
CAR LINES.

SUBCOMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

FRED C. STEVENS, CHAIRMAN.

IRVING P. WANGER.

JAMES S. SHERMAN.

WILLIAM H. RYAN.

WILLIAM C. ADAMSON.

HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE, HAVING UNDER
CONSIDERATION HOUSE BILLS RELATING TO PRIVATE CAR
LINES.

WASHINGTON, D. C., *February 4, 1905.*

The subcommittee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

Mr. STEVENS. Do you wish for a hearing this morning, Mr. Ferguson?

Mr. FERGUSON. Do you want me to begin?

Mr. STEVENS. Yes; if you please.

STATEMENT OF MR. E. M. FERGUSON.

Mr. FERGUSON. Mr. Chairman and gentlemen, I am the president of the Western Fruit Jobbers' Association, the National Retail Grocers' Association, the Minnesota Jobbers' Association, the Wisconsin Retail and General Merchandise Association, the Wisconsin Master Butchers' Association, the Duluth Retail Grocers' Association, the Superior Retail Grocers' Association, Superior, Wis., the Lake Superior Butchers' Association, Duluth, Minn., the Duluth Commercial Club, the Duluth Produce and Fruit Exchange, and the Iowa Fruit Jobbers' Association.

Mr. STEVENS. You have appeared before the Senate Committee on Interstate Commerce and testified on this same subject, have you?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. How long have you been acquainted with the fruit business?

Mr. FERGUSON. I engaged in it in the year 1896.

Mr. STEVENS. At what point?

Mr. FERGUSON. At Duluth, Minn.

Mr. STEVENS. Now, will you tell the subcommittee the experience that you have had in shipping in private cars, with especial reference to the practices and exactions which you claim are illegal and extortionate?

Mr. FERGUSON. Mr. Chairman, if it is your pleasure that I take that course in the discussion, I will use the statement that I have prepared.

Mr. STEVENS. Can you not leave that with the stenographer?

Mr. SHERMAN. Is that the statement that you used before the Senate committee?

Mr. FERGUSON. No, sir; it is not.

Mr. SHERMAN. I thought that if it had been printed over there there would be no necessity for reprinting it here.

Mr. FERGUSON. This is an outline of some of the contentions of the private car lines, and I also give you my own reasons why their contentions are incorrect, and refer in a general way to the practices.

Mr. ADAMSON. Do you prefer to confine yourself to that manner of statement, or would you prefer to give that to the stenographer and just talk over these things with us?

Mr. FERGUSON. The only preference that I may have in continuing along this line is that in my own opinion it suggests questions that would not get before us if we proceeded in the informal, catch-as-catch-can way. I will go through this rather hurriedly, and I then may be examined from the basis of the statement.

Mr. ADAMSON. On cross-examination, as it were?

Mr. FERGUSON. Yes, sir.

Carriers maintain that the perishable nature of the goods warrants high transportation charges. Yet the percentage of loss and damage claims paid is much less than 1 per cent. According to Traffic Manager Patriarch, of the Pere Marquette Railway, in his testimony before the Interstate Commerce Commission, it is practically nothing. He admits he can not recall any.

Car lines maintain they render a superior class of service, a more expensive service, and they also superintend loading, etc. As to this, Traffic Manager Patriarch testifies that the car-line service is in no way superior to the Pere Marquette service, and all shippers testify that there is no supervision exercised by the car line companies in any respect.

Car lines claim to scientifically ice cars en route. Yet Michigan contracts extend only to the terminals of the Michigan roads around Chicago and Milwaukee, and from there west and southwest shipments travel over lines not controlled by car lines. Therefore, the icing is done by the railroad companies, and shipments are under the entire care and supervision of the common, old-fashioned railroad companies that the car lines tell you are incapable of serving the public in this capacity.

Car line companies simply instruct railway station agents at points of origin to write on bills of lading "Ice when necessary," or at certain points, and connecting carriers obey these instructions. As to the cost of the ice the contract provides that the railway companies shall furnish it at \$2 per ton, delivered in the bunkers when necessary. Why in bunkers if this icing is done by car line experts?

Mr. STEVENS. What are the facts?

Mr. FERGUSON. As a matter of fact it is generally done by the same companies that furnish the service to the railroad company. They are generally performing the same service for the railroad companies when necessary as they are performing for the car lines.

Mr. STEVENS. Does the icing of a car require expert knowledge or the service of an expert?

Mr. FERGUSON. No, sir. Expert in the sense that the word is used in the case of a section man who may have expert knowledge of how to tamp a tie on a railroad. He may acquire it after doing it once.

Mr. SHERMAN. That is, a first-class common laborer, after being shown a time or two, ought to know how to ice a car?

Mr. FERGUSON. Yes, sir. With respect to expert icing, car lines claim they crack the ice and put in salt, an old practice which is common with all carriers and upon which car lines have no patent.

Is it not strange that large systems like the Chicago, Milwaukee and St. Paul Railway, Great Northern Railway, Northern Pacific Railway, Chicago and Northwestern Railway, Chicago, St. Paul, Minneapolis and Omaha Railway, Chicago, Burlington and Quincy Railway, and others have been able to get along without these self-styled "scientific" ice crackers? These roads have not adopted this fancy service, which is proof that they do not want or need it.

It is claimed that private cars reach to any and every market over any line of road and therefore broaden markets and increase competition in buying. This is not true, as I will show; but first I wish to direct attention to the statement of the Armour Car Line representative that they have rescued the grower from the coterie of local buyers by bringing in outside buyers, thereby stimulating buying competition in the interest of the growers. It has been quite generally believed that this was a sort of competition the Armour interests did not believe in, and the sort of competition they have successfully overcome in their, as yet, main line of business, buying at stockyards.

In this benevolent work they were doubtless prompted by the same divine inspiration that caused them to stretch out their strong arm to rescue the cattlemen. They have completed their task in the interest of the cattlemen and now have them by the throat, as well as the public, to whom they sell the finished stockyard products.

Now, as to the truth of the statement with respect to broadening the markets for the Michigan growers, at page 172, official notes, Interstate Commerce Commission, June car-line hearing, Traffic Manager Patriarch testified with reference to the total production and the total interstate shipments from points on the Pere Marquette Railway during the preceding four years. I say page 172 of the official stenographer's notes. If they have since printed that testimony in this form [indicating pamphlet], it may be found on a different page.

Mr. STEVENS. They have not done so.

Mr. FERGUSON. Mr. Patriarch's testimony was to the effect shown in this table.

The table referred to is as follows:

Year.	Total number of cars of fruit shipped.	Interstate, under refrigeration.	
		Cars.	Percent.
1900.....	4,360	1,485	32
1901.....	3,706	1,128	33
1902.....	6,454	1,937	30
1903.....	7,825	1,632	21

The years 1900 and 1901 were both prior to the exclusive contract. These shipments were all made under the old system of railroad companies furnishing the cars and performing the icing service.

The year 1902 was the year of the advent of the Armour Car Line Company, on the statement of the Pere Marquette Railroad Company, in which year the contract was only partly in force. There were exceptions at markets like Grand Rapids, because they were unable to get all of the roads entering into Grand Rapids into the contract. In

that year there were 6,454 cars of fruit shipped, and 1,937 of those cars, or 30 per cent of the total, was interstate.

The following year, 1903, there was a total production of 7,825 cars, and total shipments to points beyond their terminals, under refrigeration, amounted to 1,632 cars, or only 21 per cent of the total production shipped to points beyond their terminals under refrigeration.

From this it will be noted that while the maximum production was reached in 1903, the first year that the exclusive contract was in full force, interstate shipment fell off 305 cars as compared with the preceding year, and were reduced from an average of about 32 per cent to 21 per cent of the total production, therefore increasing by a large percentage the amount sold on the local markets to local buyers and shipped to markets located on the carrier's terminal.

Mr. STEVENS. What would be the effect of that as to the price to producers?

Mr. FERGUSON. The effect would be to throw a larger quantity of this fruit on markets like Chicago and Milwaukee—terminal points—and cause lower prices to obtain in those markets, and it is frequently the case—almost commonly the case during the heavy Michigan fruit season—that we can buy Michigan fruit cheaper in the Chicago market than we can in Michigan in the orchards because of the Chicago market being overstocked.

Mr. MANN. That overstocking comes by reason of the fruit that goes by vessel. The bulk of the fruit comes by boat, does it not?

Mr. FERGUSON. A great deal of it.

Mr. MANN. The bulk of it?

Mr. FERGUSON. I am not prepared to state that the larger part of it comes by boat, but a great deal of it comes by boat.

Mr. MANN. There is no doubt about that.

Mr. FERGUSON. But what I want to call your attention to is that it has been claimed that this car-line system has come in there and changed all that, and that it has brought in buyers from all parts of the United States.

Mr. ADAMSON. When the market becomes glutted in that way, and they have more than they can sell at good prices, they take less care of it, and there is less certainty of getting a good article on the part of people who buy it for use?

Mr. FERGUSON. I do not think that I quite understand your thought.

Mr. ADAMSON. Where there is so much fruit on the market, and it gets so cheap, is not there less certainty about a purchaser getting good fruit, from the condition of that market?

Mr. FERGUSON. There is a certainty that there will be more poor fruit on the market to offer and somebody must consume it.

Mr. MANN. Might I ask you whether the fruit that goes on the Pere Marquette road from the radial points to the terminal points is carried in the Armour refrigerating cars or not?

Mr. FERGUSON. Not necessarily. The contracts do not require that.

Mr. MANN. The exclusive contract—

Mr. FERGUSON. The carriers admit it to be their lawful duty to furnish cars for commerce destined to these terminal points, be that interstate or otherwise. That is the position of Michigan roads, I believe.

Mr. MANN. Do the exclusive contracts only relate to the shipments beyond the terminal lines?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Do you claim that the falling off in the percentage was due to any exclusive contract by the Armour company with the Pere Marquette road?

Mr. FERGUSON. Yes, sir; I think so, and it completely answers the contention that has been made and doubtless will be made that this system is in the interest of the growers, because it broadens markets. Now, the figures that I have given here are taken from the testimony of Traffic Manager Patriarch, of the Pere Marquette Railroad Company, he being the highest traffic official on that road. If they are wrong, his testimony is wrong.

Mr. STEVENS. Why do you think that difference should be made on account of the exclusive contract?

Mr. FERGUSON. Because of the excessive carrying charges.

Mr. STEVENS. That is what we want to find out.

Mr. MANN. The actual number of cars, however, did increase?

Mr. FERGUSON. The actual number did the first year, but these contracts were not advertised broadcast to the public. Buyers did not come in there because they knew those contracts obtained. They did not know it until they went in there and got up against the contracts.

Mr. ADAMSON. Before you go further, will you not give us a short outline of the exclusive contract conditions with which you are acquainted?

Mr. FERGUSON. Perhaps I had better read from the contract.

Mr. ADAMSON. I suppose that you could state the salient points more briefly than you could read from the contract.

Mr. FERGUSON. I have a contract here which has the salient points indicated in it.

Mr. STEVENS. Can you not state them? Would not that save time?

Mr. FERGUSON. I will read a few extracts [Reading]:

The Pere Marquette agrees and obligates itself to use the car line's equipment exclusively in the movement of fruits under refrigeration from points on its leased and operated lines, except the Detroit and Lake Erie Railroad in Canada, during the term of this contract, excepting from Grand Rapids, Mich., and excepting in the case of such shipments of fruit as are destined to points on the line of the Pere Marquette, and to Milwaukee, Wis., and Manitowoc, Wis., for which shippers may request Pere Marquette system refrigerators, and with the further exception that such Pere Marquette system refrigerators as are in suitable condition as the Pere Marquette may elect, shall be used in the handling of said fruits when the same are destined to points beyond the Pere Marquette Railroad; but in that event the car line's regular refrigeration charge, as indicated hereinafter, is to be applied and the shipments iced and handled under the supervision of the car line.

In other words, if a Pere Marquette car is loaded at Grand Rapids, Mich., for instance, consigned to Chicago, if for any reason the shipper should want to reship that car, having sold it to St. Paul or Minneapolis or any other point beyond Chicago, while it may have been transported up to Chicago without this Armour car line charge, if it is reconsigned to points beyond, the Armour car line charge applies from the point of origin to its destination.

Mr. STEVENS. Although it was not used?

Mr. FERGUSON. Although, had that car stopped in Chicago, no charge would have been made.

Mr. ADAMSON. Do you know of any other facilities which were offered or obtainable for the service that this exclusive contract covers?

Mr. FERGUSON. Lots of them.

Mr. ADAMSON. Have you ever consulted any lawyers in regard to whether that is not in violation of the Sherman Act in restraint of trade?

Mr. FERGUSON. Yes, sir; I think it is.

Mr. ADAMSON. It would be a good case to prosecute them on under the present legislation, it seems to me.

Mr. FERGUSON. I think so.

Mr. MANN. The Interstate Commerce Commission held that legal?

Mr. FERGUSON. I think not. They have not yet concluded their findings in the case.

Mr. MANN. I read in the press or in one of their reports—

Mr. STEVENS. Here is the last statement on the subject, and I will read it so as to make it a matter of record:

This record calls, therefore, for no discussion of that subject, and the matter is referred to here merely to make plain that no opinion has been expressed upon that phase of the private-car question which may come to be one of vital importance.

Mr. FERGUSON. Here is another extract from this contract.

In case consignees refuse to pay refrigerating charges, and agent at destination is unable to collect the same, the railroad shall be reimbursed for the amounts advanced to the car line. The Pere Marquette shall pay the car line three-quarters ($\frac{3}{4}$) of one cent per mile run by each car of the car line used in said refrigeration service, both loaded and empty, except on such cars as may be left over at the end of the season in shipping districts, and hauled empty to connections as provided for in the last sentence of this paragraph, while in service upon the lines of the Pere Marquette, and furnish free transportation over its lines for the use of representatives of the car line engaged in looking after the fruit movement referred to.

That is very useful when the same companies happen to be merchants in the same commodities. I will not say in every instance, but as a general statement. [Reading:]

Including permits to ride on freight trains, on the condition, however, that the car line shall (and it hereby agrees to) indemnify, protect, and save the railroad company from any loss, damage, or expense on account of any claim against the railroad growing out of any injury sustained or claimed to have been sustained, either in person or property, by any employee or agent of the car line receiving such free transportation over the lines of the railroad under the provision of this contract, whether or not such injury is due to the negligence of the Pere Marquette or its employees. And the Pere Marquette also agrees to instruct its agents to obtain by wire from the officers of the Pere Marquette such information as may be requested by the car line's representatives.

That is broad enough to get any information that they may require or desire concerning my shipments or anybody else's shipments traveling over the common highways.

Mr. STEVENS. What is the effect of that?

Mr. FERGUSON. The effect is that where the same companies are engaged in the same line of business, that knowledge alone, with ample capital, is sufficient to enable the favored firm to crush out competing dealers.

Mr. STEVENS. Have they ever attempted to avail themselves of that information?

Mr. FERGUSON. That would be a very difficult thing to ascertain—a very difficult question to ascertain.

Mr. STEVENS. Is there any charge made that they do?

Mr. FERGUSON. I have heard it charged to be true in eastern markets; yes, sir.

Mr. MANN. Does the Armour Car Line Company purchase peaches?

Mr. FERGUSON. Not to my knowledge.

Mr. MANN. You are reading about a contract that relates practically solely to peaches.

Mr. FERGUSON. But this same contract is admitted to be in existence on the larger portion of the fruit roads in the country, and they have handled oranges and lemons and pineapples and other commodities pretty generally that are handled by the wholesale fruit men of this country, and because they have not handled a car-load of peaches is no assurance that that will not be the next step.

Mr. STEVENS. Do they handle vegetables—have they handled vegetables?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Where, in the Pere Marquette region?

Mr. FERGUSON. I do not know of any to our market coming from there.

Mr. ESCH. Does that cover the celery shipments from southern Michigan?

Mr. FERGUSON. Those shipments do not move in carload lots to my knowledge. They move usually by express. I will read further from this contract:

The Pere Marquette agrees to sell the car line such quantity of ice at Shelby, Ionia, Ludington, and Saginaw as the Pere Marquette can reasonable spare from time to time, if required by the car line, on basis of not to exceed \$2 per ton in bunkers of cars.

You will observe that the railroad company sells the ice in the bunkers of the cars. When it is in the bunkers of the cars all the service is performed as to the scientific icing.

Mr. STEVENS. How long under ordinary conditions would that ice last? I appreciate that it depends on climate and season and so forth somewhat, but how long would it reasonably be expected to last?

Mr. FERGUSON. I would not know how to answer your question with respect to how long it would last, but may better answer it by saying that we were able to obtain this service prior to the exclusive contract, under the railroad system of handling the business, at a charge varying from \$5 to \$15 a car, according to the weather and to the constant movement of the car.

Mr. STEVENS. What was it afterwards?

Mr. FERGUSON. Forty-five dollars.

Mr. STEVENS. A uniform price?

Mr. FERGUSON. A uniform price.

Mr. STEVENS. For the same kind of service?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Was the service, before the exclusive contract, satisfactory?

Mr. FERGUSON. As good in every respect.

Mr. STEVENS. You were getting fruit through in as good condition?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Did you get the facilities that you wanted?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. The cars arrived?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Were the facilities changed in any way afterwards—after the exclusive contract was made?

Mr. FERGUSON. In some respects; yes, sir. After the exclusive contracts were made the facilities were almost entirely the Armour cars. I believe in some instances when Armour cars were not avail-

able for some markets other cars were used, but then the Armour charge obtained just the same. Prior to the contracts we frequently received our shipments in an Armour car, but the Armour price was not demanded. The regular railroad charge was all that was asked.

Mr. RYAN. Does it make any difference about the distance? Is the \$45 charge for any distance the car travels?

Mr. FERGUSON. No, sir; there are different charges to different markets. I will reach that a little bit later. In some instances the refrigerator charges exceed by quite a little the railroad charge itself.

Mr. SHERMAN. The stipulation of that contract is for the payment of \$2 a ton for ice. Is that a reasonable charge for the icing?

Mr. FERGUSON. The maximum price is \$2 a ton. That would indicate that the railroad companies felt perfectly safe in engaging to do that work on that basis, and no doubt would make a profit on it. I think it has been disclosed at some of the car-line hearings that at certain points there were contracts as low as \$1.37 a ton. Indeed, until very recently, and although I am not in a position to vouch for the truth of it, yet the source of my information leads me to believe that it is correct, I am told that at Duluth the contract price was 75 cents a ton whenever it was required to ice a car there. The icing is not always done by the Armour Car Line Company. It may be done by local icing companies, with which companies they make contracts the same as railroad companies do.

With respect to providing ice, I would state that it is done in most instances for the car-line people by the same companies or persons that perform these services for the railway companies. Particularly is this true in territory not covered by exclusive contracts. While cars may originate in the exclusive contract territory and pass out of that territory after a few miles travel, the buyer is compelled to pay car-line charges for the services performed by the connecting railway carriers.

As to the statement that ice in certain localities costs \$6 to \$7 per ton, I will state that I have in my possession expense bills rendered for ice at points in the desert country where ice is doubtless as difficult to obtain as in any other place in the United States at \$2.50 per ton delivered in the bunkers.

With respect to the Michigan growers who testified at the June car-line hearing in Chicago that the Armour car-line service had enhanced the value of their land and products, I would say that their conclusions, according to their own testimony, were based upon their statement that they were located at noncompetitive points, and the railway company did not furnish them sufficient cars in which to ship their products, and for that reason an Armour car under any terms and conditions was better than no car at all.

But if this be admitted as a reason for maintaining the private car-line system, it must also be admitted that it is not a carrier's duty to furnish cars, and I do not believe anyone is desirous of releasing the carriers from that duty.

Car-line companies state that they pay out large sums of money on account of loss and damage claims. If this be true, their records are the best evidence. Why not require a detailed statement and ascertain to whom they are paying these claims. It may be interesting to know. Certainly the shippers do not make their loss and damage claims directly to the car line companies. They file them with the

railroad company, and Traffic Manager Patriarch testifies that he could not remember paying any claims on this traffic, nor did he know of any pending adjustment.

It is claimed carriers can not afford to own refrigerator cars. The net earnings of all these fruit-carrying roads will not support such a statement. Further, the mileage of three-fourths cent per mile, according to the Seventeenth Annual Report of the Interstate Commerce Commission, reproduces the car in three years' time. Any solvent carrier may float a loan at 3 or 4 per cent and provide a fund with which to build cars, thereby saving such carrier the difference between the small amount of interest they would pay as compared with the excessive mileage charges they are paying car-line companies.

Further, the excessive freight rate charged and collected on commodities transported under refrigeration over commodities transported in box or ventilated cars is sufficient to soon pay the entire cost of the car.

I maintain that the refrigerator business is the most profitable part of the carrier's business, and they can well afford to own the cars.

Mr. SHERMAN. How much is the average cost of a car?

Mr. FERGUSON. The testimony is that it is about \$1,000.

Mr. SHERMAN. And your statement is that very soon the profits would pay for the car. What do you mean by "very soon?"

Mr. FERGUSON. I mean that the commodities transported ordinarily in a refrigerator car are transported at so much higher rates of freight than charged for the commodities transported in a box car that the difference in the earning of the two cars would soon pay the cost of the car.

Mr. SHERMAN. I understand that; but what do you mean by "soon?"

Mr. FERGUSON. I will reach that by illustration, which I have here.

For example, take a comparative rate, California to Duluth, fruit under refrigeration, railroad rate \$1.25 per hundredweight, minimum 26,000 pounds. Refrigeration charge in addition to this from \$75 to \$107.50 per car. Rate on onions and potatoes, which is still higher than on grain and other commodities, 75 cents per hundredweight. Difference, 50 cents per hundredweight, a total difference on 26,000 pounds of \$130 per car. This excess revenue would be still further increased with refrigerator charges added, but we will leave refrigerator charges to cover any or all costs of extra or special service that the carrier may claim is given, leaving the net difference not less than \$130 per car. Cars should easily make the round trip from California to Duluth or any like distance in thirty days, or make twelve trips per year. But make liberal allowances, and estimate eight trips per year, and you have a total net excess earning of \$1,040 per year on each car.

Mr. STEVENS. There are two factors in that that I would like to know about. First, does the car make the round trip loaded both ways?

Mr. FERGUSON. Unless, as I understand it, the car-line companies insist on the prompt return of their car. It must be borne in mind that their mileage is the same whether the car is loaded or empty.

Mr. STEVENS. That is, the car-line companies?

Mr. FERGUSON. Yes, sir. The car-line companies; and when a car load of freight is shipped from California to New York under refrigeration, the same car may not be in demand for a car of refrigerated products back to California, but it may carry almost any other products.

Mr. STEVENS. But so far as the car company is concerned, it get this compensation anyway?

Mr. FERGUSON. But if a car was delayed to be loaded with other products, it would reduce the average earnings of the car-line companies. Hence it is claimed cars generally return empty by fast trains.

Mr. STEVENS. Your computation was also based on the supposition that the car would be used all the time?

Mr. FERGUSON. I think not. Their schedule time from California to Duluth is nine days. I have based my proposition on only eight trips per year, but if you wish you may still reduce that.

Mr. SHERMAN. Your calculation is upon the basis of this car being loaded in both directions, both from California and back, is it not?

Mr. FERGUSON. No, sir; in only one direction.

Mr. SHERMAN. Your figures are on the basis of its being loaded one way only?

Mr. FERGUSON. One way only.

Mr. SHERMAN. Yes.

Mr. FERGUSON. One way only.

From Chicago to Duluth the rate on fruit under refrigeration is 44 cents per hundredweight. On vegetables (not green) shipped in ventilated or box cars it is 22 cents per hundredweight, refrigeration extra. Excess railroad rate on fruit over vegetables 100 per cent or 22 cents per hundredweight, based on 24,000 pounds, would yield excess earnings on a car of fruit of \$52.80 as against a car of vegetables. A car will make the round trip, Chicago to Duluth, each week, the running schedule each way being thirty-six hours. But allow liberally, if you will, for delays and all sorts of things that the car lines will tell you about, and allow that a car makes the trip in two weeks time, making 26 trips per year, the excess revenue is easily calculated, and amounts to \$1,362.80 per year.

In the interest of brevity, I will make only these two comparisons. They are fair examples, and sufficient, in my judgment, to direct attention to the proper channels for investigation, believing that all that is necessary to establish our case is that the facts be known.

Grain rates, Duluth to Chicago, are still much lower than the vegetable rates. Therefore, in view of the onerous burden that the fruit shipments are bearing, I submit that fruit has paid well the price of commercial freedom and should be freed from this system that is throttling the industry.

It is erroneously claimed that it is no part of a carrier's duty to furnish refrigerator cars or refrigeration. If that should be the case, by what right of law do they assume the authority to farm out that duty under exclusive contract to some favored car-line shipper, thereby preventing an independent shipper from providing himself with refrigerator cars on such better terms as may be obtained, and by these contracts bringing the independent dealer under the complete domination of his powerful merchant car-line competitor?

If it is not the carrier's duty to furnish this service, it is clearly not their lawful right to provide for it by exclusive contract.

These same carriers have engaged in the perishable traffic, and that traffic has now become enormous. Vast industry is dependent upon the use of the refrigerator car, which car has become as much a necessary instrumentality of carriage as any other car. It is therefore the carriers' common-law duty to furnish it.

The general freight agent of the Michigan Central Railway testified before the Interstate Commerce Commission (June car-line hearing) that his company was operating under an Armour exclusive contract. Yet, prior to that hearing, the traffic manager of the Michigan Central Railway Company wrote to the Hon. J. D. Yeomans, Commissioner, as follows:

Replying to your communication of the 14th instant, in the matter of informal complaint from the Knudsen-Ferguson Fruit Company, of Duluth, Minn. I find that the car rental of \$45 per car (which I understand included refrigeration as well)——

I wonder if he didn't know it.

Mr. STEVENS. It did not do it?

Mr. FERGUSON. Yes, sir; it did. But he knew all about it and did not have to inquire. [Reading:]

I find that the car rental of \$45 per car (which I understand included refrigeration as well) on the two cars named was charged as stated; not by this company, however, but by the Armour Refrigerator Car Line, who arranged with the shipper for the use of the cars.

The amount charged, I believe, is in accordance with the schedule published and filed by the Armour Car Line.

B. B. MITCHELL, *Traffic Manager.*

We were the purchasers of these goods f. o. b. Michigan. We entered into no arrangements for the Armour Car Line or any body else to furnish these cars, neither did we authorize anybody else to represent us in that capacity, neither did we know that any negotiations of any sort had even been talked of or submitted to the association loading and shipping these goods for us. There is a half tanking arrangement that some of them have signed under methods that may be termed coercive that I have referred to in my testimony before the Senate committee, so I think it will be unnecessary to go into the details of that contract here.

Yet at the same time the Michigan Central was operating under an Armour exclusive contract, and the shipper had no option in the matter, and Mr. Mitchell knew it.

Traffic Manager Patriarch testified (same hearing) that his company could not safely undertake to handle the fruit business originating at points on their line and consigned to points beyond their terminals with less than 2,500 to 3,000 refrigerator cars, all available at the opening of the season. Yet later it is shown by his own testimony that the previous year only 1,632 cars were moved under refrigeration to points beyond Pere Marquette terminals. The wildest sort of an estimate could not have made him sincerely believe that he wanted 2,500 or 3,000 cars in order to transport 1,632 carloads, that being the total number of carloads transported during the entire season under refrigeration.

In 1901, in which year shipments to points beyond their terminals reached the maximum, only 1,937 cars were shipped. Allowing that cars will consume an average of thirty days in making the round trip to Atlantic coast points, and to nearby points a trip a week, the average time consumed by a car in making the round trip may be fairly estimated at two weeks. Now, allow that 1,000 of these 1,632 cars were shipped in six weeks' time, it could be safely figured that every available car would average two trips during the six weeks. On this extravagantly liberal basis 500 refrigerator cars would meet all require-

ments, and of this number it may be safely concluded that one-half or more would be gladly furnished by connecting lines that are anxious not only to get the haul, but also to keep their surplus cars in use, earning mileage.

Mr. STEVENS. Do connecting lines furnish refrigerator cars in any number?

Mr. FERGUSON. Yes, sir.

Mr. SLEEVENS. Of your own knowledge?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. Could you get a road like the Chicago, Milwaukee and St. Paul to make arrangements to have them use some of their cars in connection with the Michigan Central or any other road?

Mr. FERGUSON. It was not necessary to go to them. The practice has been all through the history of the fruit business that the railroad companies keep advised when these commodities are ready to move, and those that have surplus refrigerator cars authorize their traffic departments to put their cars in that territory.

Mr. STEVENS. That is, the connecting lines like the Chicago, Milwaukee and St. Paul?

Mr. FERGUSON. Yes, sir; and they do concentrate at the terminal of the initial roads their cars in large numbers; first, so that the car may be earning mileage, and, second, so that they may be able to get some of the business over their own lines.

I know this to be true of my own knowledge of the Chicago, Milwaukee and St. Paul, the Chicago, St. Paul and Omaha, the Wisconsin Central, and Northern Pacific railways, all of which carriers offered refrigerator cars to serve northwestern shippers from Michigan territory, but Michigan roads would not accept these cars. I am also told this is true with respect to many other roads, particularly the Santa Fe Railway, who own and operate a large refrigerator system, but find it impossible to use their cars at most fruit-shipping points because the Armour system is in ahead of them with their exclusive contracts. It may therefore be safely concluded that if the Pere Marquette Railway were required to own 250 additional refrigerator cars, they would be equipped to meet all requirements, and because of the onerous transportation charges this traffic is bearing the Pere Marquette could well afford to provide these cars.

With respect to the demand for refrigerator cars being limited to a few weeks or a few months, as was testified, Traffic Manager Patriarch admitted that about 15,000 cars of potatoes annually were shipped from points on his company's line and that 75 per cent of such shipments demanded a refrigerator car if it were to be had, but that his company would not undertake to furnish them, and the shipper had the privilege of buying lumber and lining box cars, at his own expense, to be used for potatoes. Further testimony developed that agents were instructed to say to shippers, "We will get you an Armour refrigerator car if you want to pay us \$10." This, of course, without the use of ice or any of the fancy icing service, and notwithstanding that the testimony of one of the car-line representatives was that they did not collect car rental from both shipper and carrier and that the mileage of three-quarters of a cent per mile yielded a very satisfactory return.

Traffic Manager Patriarch testified that their company's only reason

for entering into these contracts was to provide the cars in the cheapest manner possible.

Mr. ADAMSON. That gives that \$10 to the car line or the agent of the railroad?

Mr. FERGUSON. I have never been able to trace it. The testimony is that the agents have instructions to say to the shipper, "We will give you a car if you pay us \$10."

Mr. ADAMSON. And then in addition to that \$10 you have to pay the railroad company and the car line both?

Mr. FERGUSON. Not for potato shipments.

Car-line service in other respects was in no wise superior or different to that which the railway company had previously been giving except that it provided a more adequate supply of cars. That may be verified by going over the testimony of the June car-line hearings.

This was with respect to the refrigerators. That testimony was to the effect that the car-line service was in no way different, or the service rendered by the Armour car-line system was in no respect different, from the service on the Pere Marquette, and differed in no respect except that it furnished a more adequate supply of cars.

Mr. SHERMAN. Would it not be profitable for the fruit growers to own some of those cars?

Mr. FERGUSON. They can not. The railroads would not handle them.

Mr. SHERMAN. Do you mean that the Pere Marquette would not handle those cars belonging to the fruit growers, or—

Mr. FERGUSON. No, sir; never.

Mr. ADAMSON. Not under this contract.

Mr. FERGUSON. Not under this contract.

Mr. ADAMSON. Suppose that we conclude to vitalize the Interstate Commerce Commission by clothing it with power to make orders affecting rates; would it not settle all these matters by making all of these car lines amenable to the interstate-commerce law?

Mr. FERGUSON. I think not, because it would be putting two common carriers upon the highways.

Mr. ADAMSON. If both of them confess that the business can not be done without their cooperation, both ought to be amenable to the law, ought they not?

Mr. FERGUSON. It is not so confessed, as a general proposition. It is asserted to be so by the lines under contract, but other lines do not take that position.

Mr. SHERMAN. You said a moment ago that if the fruit growers secured private cars the railroads would not handle them. You mean because of their exclusive contract with the Armour people?

Mr. FERGUSON. There may also be other reasons. The railroad companies have cars of their own, and they much prefer to keep their own cars in motion. It would be entirely optional with them whether they did or not, and where the exclusive contracts obtain they will not handle any other car, except it be an Armour car, unless that car is handled under the Armour arrangements and for the benefit of the Armour car-line system.

Mr. ADAMSON. My question as to the fruit-growers' association was meant to refer to the railroads which profess that they could not furnish cars.

Mr. FERGUSON. I catch your idea; but I think there is great danger in that, Mr. Congressman, in departing from the past way of doing

business and from the holding of the railroad company responsible for furnishing the instrumentalities of carriage.

Mr. ADAMSON. In the southeastern country, you know, in Georgia and Alabama, the fruit industry is not developed to any large extent and there are not large quantities, and the railroads there claim that they are forced to make these contracts with the Armour company because they can not afford to furnish the cars themselves for the small quantity of fruit moving in six weeks and they can not otherwise secure the cars. What about that?

Mr. FERGUSON. They claim a great many things that are not true, and I think that is one of them.

Mr. ADAMSON. You think that they could get them?

Mr. FERGUSON. They can well afford to own the cars, and I think the cars would produce a good revenue——

Mr. STEVENS. Do you think that the connecting carriers would furnish them?

Mr. FERGUSON (continuing). But if you continue this holding system until it becomes so large that there are but a few outside lines then the outside lines will be entirely at the mercy of the car line companies, and if they did own cars of their own there would be no hope of their owning anything on other lines, because the holding company would always be in ahead of them there.

Mr. ADAMSON. I know that the fruit industry is greatly retarded and discouraged on account of the difficulty of getting transportation.

Mr. FERGUSON. I know that.

Mr. ADAMSON. And there would be thousands and thousands of acres of orchards in my country if there was the transportation.

Mr. FERGUSON. And that situation is being more and more aggravated year after year, because you let the companies take the position that it is not their duty to furnish refrigerator cars, and if we continue along that line it will not be but a few years until they neglect entirely to look after the fruit industry, and it will be absolutely and entirely in the hands of the holding companies.

Mr. MANN. You have referred to the amount of profit that the railroad companies could make out of a car. Take the Georgia peach season, which I presume does not last very long. Could those southern roads afford to build refrigerator cars for that short season, and if they could not for that short season, could they keep those cars occupied in some other way during the balance of the year?

Mr. FERGUSON. In reply to that, Congressman, I would say that I am not a dealer in Georgia peaches to any extent at all.

Mr. MANN. Well, take the Michigan peaches, then?

Mr. FERGUSON (continuing). But I think that it may be safely concluded that if each carrier was required to own a reasonable number of refrigerator cars, sufficient to reasonably protect the commerce originating along their several lines, the interchange of traffic would take care of itself entirely, just the same as it does with respect to box cars or any other instrumentality of carriage, and the Georgia roads or the southern roads would not be required, nor it would not be necessary for them, to own cars equal in number to the carloads of fruit originating on their lines. Connecting lines, knowing when that crop was ready to move, would, the same as they do in the Michigan case or in any other place where free competition exists, send their surplus cars there.

Mr. ADAMSON. The point is, are the fruit refrigerator cars confined to the fruit business, and are they useless for other business, or can they be used all the year around, a part of the time to haul something else?

Mr. FERGUSON. They are used all the year around, and I think careful inquiry will fail to locate any of them rusting on the sidetracks. They are used for other business.

Mr. MANN. The fruit business, running on latitudinal lines, starts now in Florida with strawberries and winds up in Michigan or farther north. Could the Pere Marquette line conveniently use special cars that start in Florida at this season of the year? Would there be any arrangement between the railroads by which they would get those cars?

Mr. FERGUSON. The impelling motive would be business for the carrier, just the same as the impelling motive takes care of all other lines of business, and the connecting carriers best located and situated to reach that territory, you may depend upon it, would reach it if all railroads were required to own their fair quota of refrigerator cars.

Mr. MANN. There is practically no connection between the roads running from Georgia and Florida along the Atlantic coast line and the roads from the Michigan peach district running northwest.

Mr. FERGUSON. Then, I would say that it is absolutely necessary for all common carriers, whether they be in Florida or Georgia or any other State, to be told that if we give them sovereign rights and industry springs up along these highways that is dependent upon the use of any special type of equipment, and they encourage that industry and hold themselves out as carriers of the products of that industry, we will look to them to protect that industry.

Mr. STEVENS. Would it not cost more?

Mr. FERGUSON. I do not think so. I am going to answer that question a little more in detail for the Senate committee, and I will submit the same answer to this committee later on. But even if it does cost more, is that a sufficient reason why a holding company should be created and a monopoly should be created for the United States? If we proceed upon that theory, we may just as well proceed upon the theory that all business should be centralized and put under one management.

Mr. STEVENS. That was not my theory. My theory was that that additional cost might discourage production if the products could not find a profitable market.

Mr. FERGUSON. Answering further, then, I will say that there have been no limitations with respect to cost of carriage under the present system. It has been as high as the moon whenever it has been possible to reach it, and a careful examination of the tariffs will disclose that distance of service has not been taken into consideration with respect to making the tariffs. You create a monopoly and I will guarantee that monopoly will never operate in the interest of the public; it will be in the interest of higher prices.

Mr. STEVENS. Then you maintain that even if it costs more for a railroad to own and operate one of these cars that the difference in the cost of refrigeration and matters like that would be less, so that the total cost to the producer and consumer would not be materially changed; that is your position?

Mr. FERGUSON. I think that if the railroads owned and operated their cars, even though it might require a few more cars, the cost of

transportation would be much less to-day; much less to the fruit-growers, and they would have less to complain of than they have to-day.

Mr. MANN. You think, as I understand, that the railroad company is obliged to furnish cars wherever a man raises fruit and wishes to ship it?

Mr. FERGUSON. If a railroad company has once engaged in that business.

Mr. MANN. That would also cover shipping by express?

Mr. FERGUSON. Express companies are not common carriers, or rather are not amenable to the act to regulate commerce, as I understand it. I wish they were.

Mr. MANN. I think myself that is right; but if it is the duty of the railroad company to furnish ample accommodations to ship by freight then there would be no occasion for shipping any fruit by express, would there?

Mr. FERGUSON. Not unless it be so desired by reason of quicker time. They make a little quicker time.

Mr. MANN. These fast freight trains practically make express time, do they not?

Mr. FERGUSON. They do not; nowhere near it.

Mr. MANN. Out on the road I used to live on they made faster time than the express trains.

Mr. FERGUSON. That has not been my experience as a dealer.

Therefore according to this testimony it must be conceded that the contract was entirely in the interest of the carrier. Similar testimony was given by other competent witnesses. Yet in the face of this testimony it will be strongly urged upon you gentlemen that the superior "scientific" car-line service is better for the people, and therefore Congress should protect the shipping public by compelling the public to use this service, thereby bringing them under the legal domination of the infamous (though, as they would have you believe, munificent) car-line system.

With respect to the private car-line system being economical for the carrier, I claim their own showing conclusively demonstrates the contrary to be true, and that the excessive mileage they are paying exceeds by considerable the amount that would pay interest on a sufficient principal to own these cars.

Therefore, one should look askance at this contention and direct the mind to inquiring as to the probability of community of interest being the impelling motive. But all of these contentions, to my mind, are absolutely immaterial. If in the interests of the carriers' convenience you are ready to admit of car-line practices such as disclosed, it must be upon the theory that it is fair to release the carriers from their obligations to the public whenever it is in the carriers' interest to do so. The practice will rapidly spread, and upon the same theory they will soon be seeking a release from their obligation to the public of furnishing box cars or any other instrumentality of carriage; and I doubt that if the privilege be granted with respect to one style of equipment that its application could be denied to any other style of equipment.

If it be economy to the carrier, the public certainly derives no benefit, because instantly upon the execution of these exclusive contracts refrigerator charges are increased from 300 to 500 per cent.

Further, with respect to the total number of cars required for all lines, the Armour car line's representative testified before the Interstate Commerce Commission (June hearing) that their company operated 8,000 refrigerator cars in the fruit business. They serve with these cars not only the Pere Marquette Railway Company, whose traffic manager testified his company would need 2,500 to 3,000 cars at the opening of the season, but the Michigan Central, the Grand Rapids and Indiana Railway, and the Grand Trunk Railway in Michigan, each of which would presumably need a like number. In addition they were serving the Georgia peach territory and practically all of the Southern States, besides the great Southern Pacific system, from whose territory there is a constant and never-ceasing flow of fruit in refrigerator cars; and this is all being done with 8,000 cars. So it can be seen that the extravagant statements of certain carriers with respect to the large number of cars they would need may be materially pared down.

If each road was required to own a sufficient number of cars to reasonably protect the commerce originating on their several lines, the natural interchange of traffic would take care of itself, and though a car may go off its owner's line it would be all the time earning the regulation mileage charge of three-fourths of a cent per mile, and therefore no hardship to the owner.

The private car line practices for a long time were confined to the California roads, where the demand for refrigerator cars is the rule the year through and not the exception. Hence none of the arguments that the system is justified because of the limited demand for refrigerator cars would obtain in support of the California situation. This statement is clearly borne out by the action taken by the Santa Fe road in building and equipping their own refrigerator cars.

And so I might go on pointing out the fallacies of all such contentions, but to my mind it is a waste of time and I should not have undertaken to have done so to any extent had I not reason to believe that all of these contentions have and will be offered in defense of the system.

I wish to say, however, in this connection that the reasons offered by the carriers for entering into these contracts are varied and many. In this respect I call special attention to the situation as it obtains with the St. Louis and San Francisco (or Frisco) Railway Company. It will be observed that this system arbitrarily takes away from the shipper the right of routing, all of which is finally chargeable to the private car line system. It will also be observed by letters in my file from their traffic managers that, in an effort to ascertain whether or not the use of these private cars would be forced upon us, I was unable to get any definite information, even after a rather spirited correspondence extending over six weeks' time.

First, they maintain that it was necessary for them to control the routing of the cars in the interest of the growers. Later they maintained routing in their own hands was necessary in order to enable them to obtain refrigerator cars from connecting lines, notwithstanding that refrigerator cars were provided by the Armour car lines and that the Frisco would not accept any other cars. And as to my question with respect to whether or not they would compel us when making shipments to use private car line cars they ignored this question altogether. But after a further pressing request with respect to the

forced use of these cars a disingenuous and unsatisfactory answer was all that I was able to obtain.

As a final result I was able to obtain over the signature of their third vice-president the information that they had entered into a contract with the Armour car lines to furnish cars, but no answer was made as to whether or not they would allow shippers to use any other car. But the rather remarkable disclosure was made that they retained arbitrarily in their own hands the routing of these shipments over connecting lines (which experience shows is done without respect to the service rendered) that they may discharge their obligations to connecting lines that haul or assist in concentrating the Armour cars at Frisco terminals.

MR. STEVENS. Right there, does that make any difference with the service that is received by the shippers?

MR. FERGUSON. It makes a large difference, and what I wish to particularly direct your attention to is that there is a further burden that the shipper must bear, because, as stated by the third vice-president of the road, of the necessity of paying the connecting lines that haul the empty Armour cars to their terminals. So that whenever these practices obtain there are all sorts of discriminations and manipulations immediately put into effect.

It will be necessary only to direct your attention to the secret routing agreement, in my possession and now offered for inspection, to point out the fallacy of all these statements, as it will be noted that traffic is divided up in a manner such as to disclose the fact that no thought of the service could have entered into the arrangement, and, further, that the agreement is dated April 23, 1903, which was prior to the beginning of the strawberry movement on the Frisco system, and therefore at that time the Frisco Railway could not have known what roads would perform the service of concentrating at Kansas City or St. Louis the Armour cars, as these cars would be picked up all over the country by the various different roads.

This secret arrangement is clearly in the interest of the carriers and the car lines, and in their interest only. These and similar engagements, also this constant double dealing with the public will be found wherever these private car-line companies operate. The convenient channel is provided by permitting the two to work together upon the common highways, and you can not stop or prevent similar practices by extending the jurisdiction of the Interstate Commerce Commission to these car-line companies and attempting to make common carriers out of them.

Such a proposition would for the immediate future give the car-line companies a legal standing and provide a convenient channel for manipulation, and place a screen between the shipper and the vicious secret agreement, from which he would have no protection, and the Interstate Commerce Commission would have to be provided with a sanction to inquire into the railway companies' affairs to the same extent that a national bank examiner inquires into the affairs of a banking business, and charged with the duty of keeping a corps of expert accountants constantly examining these channels in order to protect the public against such vicious arrangements, and, further, the Commission held responsible to the public for such protection.

On the contrary, the Commission's duty would be that only of hearing complaints from any shipper or shippers who, perchance, after

years of fierce struggle, may discover that he or they are being commercially murdered by these vicious discriminations as well as the expense of the litigation.

On pages 64 and 104, Official Notes, June car-line hearing, will be found Traffic Manager Patriarch's testimony that certain points on their line were excepted from the operations of these exclusive contracts during the year 1902, particularly Grand Rapids, Mich., because, as stated, the Grand Rapids and Indiana and Grand Trunk railways were not parties to the secret compact, and for the Pere Marquette or Michigan Central roads to force the use of the Armour cars upon the shippers at this point would result in throwing all of the business to the outside lines.

In view of the testimony as indicated above, is it not clear that the iniquitous private car line system can not obtain under full and open competition, and that there is no merit to the system and no merit to the car line's contention with respect to superior service, and that the public is better served under this system than otherwise? The Grand Rapids situation clearly demonstrates that the public use the system only when compelled to do so.

In the following year, 1903, the Grand Rapids and Indiana and Grand Trunk were won over and taken into the secret compact. Then and there ended the commercial freedom of the Grand Rapids fruit industry, and all shippers but one at that point are now yielding up tribute to the system. One shipper there, who happened to own 30 refrigerator cars that he had operated for years on the mileage basis alone, was at first denied the privilege of using his own cars in making shipments; but in order that this shipper might not become troublesome, as his protests indicated he might, this shipper was privileged to use his own cars in making shipments to his customers on one condition only, to wit: That he become a party to the secret compact and agree to charge his customers the Armour rate, which the railway companies kindly offered to bill as advance charges against all shipments so made, collect from the consignee at the destination, and rebate this shipper the difference between the Armour charges collected and the actual cost of ice, based upon the total amount used at the rate of \$2 per ton in the bunkers. And it will be noted in this case that the railway company undertook to do the icing itself, or rather arranged for its being done by the connecting lines over which the shipments might travel.

This arrangement amounted to the granting to this shipper a handsome rebate on each and every car shipped, but be it remembered that this arrangement was not of his own seeking, but on the contrary, he was compelled to subscribe to this trust agreement in order that there might be no competition for the car line at this point. Be it further remembered that this is the same car-line company that would have you believe that they were engaged in the munificent work of bringing in buyers from all parts of the country to buy the Michigan products, to the end that competition in buying might be stimulated in the growers' interest.

In view of all of this willful and manifest misrepresentation, it would seem that any and every statement made in defense of this system should be given but little consideration at the hands of fair-minded men.

I have here the report of cases at Chicago which I would like to refer to.

Mr. MANN. What do you read from?

Mr. FERGUSON. The Packer, a trade paper of Kansas City. This article was written by the chairman of the car-line committee of the National League of Commission Merchants. So it is authority.

These are the Ellis and Coyne Brothers' cases.

The Messrs. Ellis had received a car of tomatoes from Gibson, Tenn., upon which the freight charge was \$111.67 and the icing charge \$73.92. The Messrs. Ellis were instructed by your committee to refuse to pay the icing charge. This refusal resulted in the railroad accepting the freight charge and subsequently suing before a justice for the icing charge.

This suit was lost by the Messrs. Ellis in the justice's court and an appeal at once taken to the superior court. In the meantime your committee appointed a local finance committee, composed of Messrs. William Wagner, John W. Low, and Richard Coyne. This finance committee raised \$405. It is proper to state that the whole of this amount was subscribed by Chicago League members with the exception of \$20. A part of the fund raised was used in retaining counsel and defending and appealing the Ellis case and providing for its prosecution in the superior court.

The Messrs. Coyne Brothers had a similar case of excessive icing charges, this on a car of melons from Indiana. The freight charge in this instance was \$39.15, the icing charge, \$45. Messrs. Coyne Brothers were likewise instructed to refuse to pay the icing charge. As in the Ellis case the railway accepted the freight charge, but in this instance instead of the railway the Armour car lines instituted suit for the icing charge. The cost of this suit was likewise taken care of by the local finance committee. Your committee thus has two suits under way, one where the railway is suing for the icing, which service was supposed to be performed by the Armour car lines, the other where the Armour car lines are themselves suing for the icing service, which they were supposed to have performed; and yet in both these instances the icing service, while supposedly performed by the Armour car lines was in reality performed by the railways, and in neither instance did the icing service performed by the railways cost more than \$15 per car, while the shipper was charged in one instance \$45, in the other \$73.92.

A discussion of the intricacies and deviousness of railway and Armour car lines icing methods under the exclusive Armour contracts would be too tedious to enter upon at this time. Suffice that in nearly all instances the railway does the icing, the Armours do the charging, the railways do the collecting, and the producer at one end and the consumer at the other end pay the bill.

A sample of Armour extortion. Again, referring to the Ellis car of tomatoes that we may still more fully understand the effect of the Armour exclusive contracts, we have to know that the distance from Gibson, Tenn., to Chicago is 522 miles, and from this point the Armours charged the Messrs. Ellis \$73.92 for icing, while the icing charge by the Illinois Central Railroad from New Orleans to Chicago, a distance of 923 miles, is only \$30 per car, so that in this instance the Armour exclusive contract enabled the Armour lines to charge \$43.92 more for refrigeration for a distance of 522 miles than the Illinois Central, upon whose lines there are no exclusive contracts, charges for a distance of 923 miles.

But if this statement shows an intolerable state of affairs, what shall we think when we are made aware that upon the selfsame day in which the Messrs. Ellis received this car of tomatoes from Gibson, upon which they paid the \$73.92 icing charge, they received a like car of tomatoes from Memphis, which is a few miles farther from Chicago than Gibson, and upon this Memphis car the icing cost was only \$15; and to make matters worse the car used from Memphis, upon which the icing cost was \$15, was an Armour car, but hauled over a road where no exclusive Armour contract exists. Think of it for a moment. Under the Armour exclusive contract, from Gibson, Tenn., 522 miles, \$73.92; from Memphis, Tenn., 527 miles, practically the same distance, under free refrigerative competition, \$15.

Mr. RYAN. Has any of those suits for the collection of any of the icing charges been finally decided?

Mr. FERGUSON. No, sir; I have one in process myself in the Federal court at Duluth, but no doubt it will be some time before it will be determined.

Mr. SHERMAN. I want to preface this question I am about to ask with the statement that I am thoroughly in sympathy with this effort to remedy whatever evil exists in these private car lines, and I am grateful to anybody that will bring us any information that will help us in the solution of that question.

I have been told, Mr. Ferguson, that you are not the accredited representative of some of these associations which you catalogued at the opening. I was going to ask you if you had credentials showing you to be their representatives?

Mr. FERGUSON. Yes, sir; from every one of them, and I will file them.

Mr. RYAN. Does your objection apply entirely to the class of cars known as refrigerator cars?

Mr. FERGUSON. As they relate to my particular business; but I think the system is dangerous to all business.

Mr. RYAN. The principal thing you object to in the refrigerating cars, as I understand it, is the excessive cost of icing?

Mr. FERGUSON. No, sir; that is a secondary consideration. I as an independent merchant am compelled when I use the highways in the shipment of goods, as I am compelled to use them, to give my competitors a full knowledge of my business, and I must entrust to them the care and shipment of my goods, and I am not willing to do it.

Mr. RYAN. They are frequently your competitors, then?

Mr. FERGUSON. Yes, sir.

Mr. ADAMSON. Do those same conditions in the contract obtain as to the private cattle cars?

Mr. FERGUSON. I suspect they do, largely, although I have not inquired into the conditions that obtain there. But it is pretty largely that way, I should think.

Mr. ADAMSON. Do you know who is responsible or does anything toward the care and feeding and watering of cattle in those cars; does the railroad company do that or the private car company?

Mr. FERGUSON. The Supreme Court, I believe, has held that the railroad company is responsible for it.

Mr. ADAMSON. Yes, but does the private car company ever do it?

Mr. FERGUSON. I am not advised as to that, having had no experience in that direction.

Mr. ADAMSON. You do not represent that association?

Mr. FERGUSON. No, sir.

Mr. STEVENS. Mr. Ferguson, in what way does the bill come for refrigeration service to you as the shipper, as the consignee?

Mr. FERGUSON. The common way of presenting the bill is simply to include it in the total amount, the expense bill as presented by the railroad agent, without its being itemized, unless a demand is made for it to be itemized.

Mr. MANN. Is that filed in the schedule of tariffs?

Mr. FERGUSON. It is not; no, sir.

Mr. MANN. Does the law require it—

Mr. FERGUSON. They say not, upon this theory; that it is not a transportation matter at all, that it is a local service charge. We do not agree with them.

Mr. MANN. But as a matter of fact, do the railroads that carry their cars file as a part of the tariff schedule the cost of refrigeration?

Mr. FERGUSON. No, sir; not as a rule, and if they do the charge is never designated. They may refer to it, that it does not include refrigeration, but the charge is never definitely fixed.

Mr. STEVENS. Just one question, Mr. Ferguson. Have you seen any schedules of Armour's charges. Are they filed or located or placed anywhere?

Mr. FERGUSON. I have seen schedules of Armour charges but they are not commonly obtainable.

Mr. STEVENS. Are they posted as other regular schedules are?

Mr. FERGUSON. Not in our territory. And further than that, I have been unable to get them or get any information concerning them after diligent inquiry from railroad commercial agents at our point, and they have sometimes consumed an entire week endeavoring to find out for me what these charges would be, from one point to another, and then have failed.

Mr. STEVENS. Does it make any difference to you as a shipper whether you receive your cars routed as requested by you or as routed by the originating carrier under the exclusive car-line contract?

Mr. FERGUSON. It makes a great difference.

Mr. STEVENS. In what way?

Mr. FERGUSON. In the first place, if the routing be left entirely with the initial carrier it is in all effect the same as pooling the quality of service. They disregard it, the connecting carriers or the connecting lines will not look to the consignee or the owner in this business, but will look entirely to the initial line and will dicker with the initial line for the business; and the owner of the car may protest against the service and they may listen to his protest, but they will not heed it, knowing full well as they do that the owner has no power to divert the business away from them.

Again, roads do not furnish the same quality of service. For instance, I have a car originating from the southwest coming through Kansas City or St. Louis. There are many diverging roads from those points that may carry that consignment to Duluth for me, and they give many grades of service. Our business (dealers in perishable commodities) is such that it makes it important for us to know what progress our shipments are making toward market, and just what time they will arrive, and where they are. Some roads undertake to give us this information. The moment they get a car turned over to them at their terminals they immediately notify us by wire that they have received this car from such a line, the connecting line, giving the car number and condition of contents, and they will follow it along the line and if there is a delay they will advise us, therefore enabling us to make our arrangements in advance of the arrival of the goods for the sale of them. Being, as I say, of a perishable nature it is highly important, as anyone that has had anything to do with perishable traffic will recognize, and indeed it is absolutely essential to the successful carrying on of the fruit business, that we should have this information.

Mr. ADAMSON. You say that at the same time they give you that advantage they are overly kind and give your competitor, Armour & Co., the same information about your car?

Mr. FERGUSON. Yes, sir; the Armour car lines are permitted to have that information, and as long as they are permitted to operate

cars you could not prevent them from having it, because they keep track of their own cars, and the practice is now when a waybill is made out at the point of origin it is made in duplicate and a carbon copy is given to the Armour car lines.

Mr. RYAN. You have mentioned the Armour Car Line several times. Do the Armour car lines ship fruit?

Mr. FERGUSON. Yes, sir.

Mr. RYAN. Their competitors are commission men in that line?

Mr. FERGUSON. Yes, sir.

Mr. RYAN. Are there any large private car lines of refrigerating cars besides Armour?

Mr. FERGUSON. There is the Gould system, known as the A. R. T.; there is the Santa Fe Refrigerating Transportation Company, owned by the Santa Fe Railroad; and there is the Merchants' Dispatch Transportation Company, which I think owns about 4,000 cars.

Mr. RYAN. And they have exclusive contracts over roads?

Mr. FERGUSON. I think not. They put their cars into any territory for mileage earnings, and they are operated the same as carriers' equipment in every respect.

Mr. RYAN. The Armour Company, then, is the only company you know of that has those exclusive contracts?

Mr. FERGUSON. I do not know that the A. R. T. has exclusive contracts, but inasmuch as the car line is owned by the carriers themselves they operate almost entirely upon those lines. The same is true of the Santa Fe. I wish to state, however, before closing that Congressman Stevens asked me to say something with respect to my ideas of a holding company and what it may result in. I had arranged to do that, but the time is fully taken up.

Mr. SHERMAN. If you have prepared some special information we would like to have it.

Mr. ADAMSON. We might have a session in the afternoon.

(Informal discussion followed, and thereupon at 12.05 p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee met at 2 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF MR. E. M. FERGUSON.

Mr. FERGUSON. Mr. Chairman and Congressmen, it is not my intention to worry you with a long, irrelevant argument, but Mr. Stevens suggested to me last night that he would like to have my views with respect to the holding company system, and also as to the advisability of legislation designed to totally eliminate the private cars. I recognize fully that legal questions are involved no matter which course this legislation may take, and my views in that respect are not of much importance, being only the views of a layman. But a few practical thoughts suggest themselves to me, and I deem it not unwise to place this committee in possession of such thoughts.

If you continue the private car-line system in any form you can not prevent the Armour interests from obtaining such information as they may desire with respect to their competitors' business, and I do not

believe Congress can constitutionally make a law that would give the car-line trusts such advantages over all their competitors. The highways by inherent right belong to all alike, and any law that would admit of one class of citizens enjoying special privileges on our highways would not stand a test of the courts.

Again, to continue the private car-line companies for the purpose of supplying refrigerator cars will unquestionably result in the stronger company eventually controlling all refrigerator cars. Such monopoly may be obtained by the Armour car-line company or by a holding company controlled by several of the large railroads, for instance. The power concentrated in such company it may be well to consider for a moment. First, if owned by a holding company controlled by several of the carriers, only such carriers as were parties to that holding company could safely rely upon being properly served with refrigerator cars, and even the carriers parties to the holding company may be insufficiently supplied at times, providing the holding company did not build, own, and keep on hand a number of refrigerator cars equal to any demand that may exist, and economy being the order of the day and the theory upon which the holding company is permitted to exist, it is fair to presume they would endeavor to operate with as few cars as possible, and would not build in excess of that number which in their judgment may be constantly employed, making no pretense of taking care of the maximum demand. The shipper, whose all may be represented in one or many cars of perishable products, may find it impossible to get a refrigerator car in which to transport his products to market, and the little sum so much depended upon by such grower or shipper from the sale of such products for sustenance of family is to him thereby forever lost.

In such cases you will labor in vain to fix the responsibility under the double common-carrier system. Again, roads not parties to the holding company must of necessity be dictated to by the holding company and accept whatever terms imposed if they desire to be supplied with cars by the holding company. Or the alternative—build and own its own refrigerating cars, in which latter case it would be operating to a great disadvantage, because its refrigerating cars would not be used for interchange of traffic on the lines parties to the holding company. Thus all outside roads or new roads that may be built in the future must either accept the arbitrary terms and conditions of the holding company or own their own refrigerating cars, which would stand a good show of remaining idle when not in use on the owner's line, because they would not be used by such lines as were parties to the holding company.

Or, again, these outside companies may be willing to take chances and depend on the holding company, and if the holding company fails to sufficiently supply such dependent carriers the only loss to such carriers would be the earnings on a few cars of perishable commodities they might have hauled if they had had refrigerator cars in which to transport, a loss which would be of small consequence to the carriers. But how about the owners who may have lost their all in a few cars of commodities that they were unable to ship because of the lack of refrigerator cars in which to ship? You may answer that they may hold the railroad responsible. They certainly could not hold the holding company responsible.

Mr. STEVENS. Now, is that true? Do not the private car companies now hold themselves responsible, make a sort of insurance against loss or damage on account of lack of refrigeration or insufficient service?

Mr. FERGUSON. No, sir; they do not, and I do not think there is any law that would hold the car company responsible for lack of sufficient number of cars or proper service. You deal entirely with the carrier. The same remedy exists now as would exist then, if you say you may hold the railroad responsible. I think the railroad companies are responsible for a proper supply of cars now.

Mr. SHERMAN. You do not know the private car company, you as a shipper?

Mr. FERGUSON. No, sir.

Mr. SHERMAN. You simply know the railroad company?

Mr. FERGUSON. I simply know the railroad company.

Mr. SHERMAN. So far as the question of damage is concerned, that is no injury to you, then, because your contract is with a responsible company, is it not? If your shipment is injured or lost you hold the railroad company responsible?

Mr. FERGUSON. Yes, sir.

Mr. SHERMAN. They are answerable in damages to you?

Mr. FERGUSON. Yes, sir.

Mr. SHERMAN. Then that of itself is of no special interest.

Mr. FERGUSON. No, sir. I say the conditions would be the same only if it was attempted to hold the holding company responsible for the furnishing of the cars. In place of having one company to deal with—one company to hold responsible—you would have two, and the difficulty of placing responsibility would be next to impossible and render any law almost inoperative so far as its practical value may be concerned.

Mr. STEVENS. I see your point.

Mr. FERGUSON. Such a remedy is of no practical value and is beyond the reach of the ordinary shipper. I therefore submit that it is neither wise nor just to submit the perishable commerce of this country to such a constant menace. Neither do I believe that the perishable products may be lawfully subjected to transportation laws less favorable to this traffic, or laws that do not protect it as fully as any other traffic is protected.

The holding-company system has been condemned in this country. In its power to do harm it is more of a menace to commerce and public interest as owner and controller of all the instrumentalities of railway carriage than it is when owning or controlling two or more competing railroad lines. As owners of all refrigerating cars the holding company, both in respect to charges and grade of service rendered to the public, would eliminate competition. It would also be the death knell for improvements and style of equipment, as when all railways were served with refrigerator cars by one holding company, although new patents and better cars may be invented, there would be no incentive for providing the better cars.

Mr. STEVENS. Right there, if you please. Does not the Armour Company provide the best possible cars now?

Mr. FERGUSON. No, sir; they have some good cars, but their line as a whole is not equal to some other lines as a whole.

Mr. STEVENS. What other line?

Mr. FERGUSON. For instance, the Santa Fe has a newer refrigerator line and all are modern cars. The Northern Pacific have a very modern car and thoroughly equipped.

Mr. SHERMAN. That is a more expensive car than the average expense of the car you spoke of this morning, is it not? I think you said this morning that ordinarily the refrigerator car cost \$1,000. Now such cars as the Santa Fe Refrigerator Company are now using, for instance, cost considerably above \$1,000, do they not?

Mr. FERGUSON. I think I did not qualify my answer by "ordinarily." I think I said "testimony to that effect."

Mr. SHERMAN. Perhaps you did.

Mr. FERGUSON. And that applies, as I understand it, to the modern car. There are many refrigerator cars in existence and in use to-day that were built six or seven or eight or ten years ago that have to a certain extent become obsolete, but still are in use, and the point that I make here is that newer and better cars may come into existence and use, but with competition eliminated and the carriers throughout the country served by one company the public would be denied the advantage that such new inventions may offer.

Mr. STEVENS. Special cars are devised for the different kinds of business, are they not, and those cars are used exclusively in the particular kind of business they are adapted to?

Mr. FERGUSON. I do not know to what extent you refer. For instance, a refrigerator car is used for the transporting of many kinds of commodities needing refrigeration.

Mr. STEVENS. That is what I want to get at.

Mr. FERGUSON. And without refrigeration they are used also. They are used as a summer car and as a winter car. The same commodities that require refrigeration in the summer time require the use of a refrigerator car in the winter time to protect the commodities against frost damage, and in the meantime they may be used for the transporting of almost any other commodities except possibly grain, and I understand that they have in some instances been used by some special appliance for grain. I think that is not common in our practice, perhaps.

Mr. ESCH. On your theory, then, the Pullman Palace Car Company would cease making improvements?

Mr. FERGUSON. Well, I don't know whether they have or not. I do not imagine, though, that they will put out of operation cars that may be used—

Mr. ESCH. The theory is that they do keep abreast of the situation.

Mr. FERGUSON. I have ridden on many of their cars that I did not think were abreast of the situation.

Mr. ESCH. But you know that they are constantly making improvements, of course, to satisfy the service?

Mr. FERGUSON. I think that they have many different grades of cars.

Mr. ESCH. Certainly.

Mr. FERGUSON. And some lines may be provided; other lines not provided, and those other lines would perhaps, if free and open competition prevailed, be supplied with the latest improvements.

Mr. ESCH. Of course that is done now by the trunk lines shunting the old cars on the branch line.

Mr. FERGUSON. And it is not a parallel situation—

Mr. ESCH. Your theory is that it would not develop the newest improvements if one car-line company had the field?

Mr. FERGUSON. That is my position.

Mr. ESCH. The Pullman company has practically the whole sleeping-car field, with the exception of the Milwaukee road?

Mr. FERGUSON. But it is not a necessary element of carriage, it is a luxury; but you can not transport commodities that depend entirely on refrigeration for safe-keeping without the use of refrigerator cars. It is quite possible to travel without the use of Pullman cars; it is not possible to transport a carload of peaches from California to New York without the use of a refrigerator car.

I am satisfied that Congress has the power to fully correct the vicious private-car line abuses. If the disturbing of property rights of the car lines tends to deter, then I beg Congress to direct its attention to the millions of people that are being now so violently disturbed and the countless millions of dollars that have been wrongfully taken from the people by the vicious car-line system. The public have already paid the car-line companies many times the entire cost of all refrigerator cars owned by them, and by all laws of justice they should be compelled to reimburse the public that which they have wrongfully taken from them.

Now, as to whether or not the carriers would furnish refrigerator cars. Many of them are so doing. Notably among them are the Chicago, Milwaukee and St. Paul Railway, the Great Northern Railway, the Northern Pacific Railway, the Chicago and Northwestern Railway, and the Illinois Central Railway. These roads furnish as good or better cars, equally as good service, or in fact better service, because on these lines there are no private-car lines to control the routing, sell the tonnage to connecting lines, or merchant car line companies who serve their own interest best by neglecting to properly care for the shipments in their charge. But I will state that it is my candid belief that if you legalize the private-car line system the roads that are now serving the public with refrigerator cars will, in order to make additional profits and enable them to meet all kinds of competition through secret manipulation, either enter into some kind of an agreement with car lines like the Armour Car Line system, or else their own refrigerator cars will be set apart from their other equipment and operated on the private-car line system.

As to whether or not the carriers will supply refrigerator cars if privately owned cars are prohibited, it is unquestionable their lawful duty to do so, and I see no good reason why they should be relieved of that duty, and upon no other theory than that such is not their duty is it a question as to whether in this respect they may exercise their own option.

In my opinion carriers who have been given monopoly upon our highways should be required to fully protect the commerce originating along their several lines by owning and having under their control all the carrying equipment required for safely transporting such commerce; and for the willful neglect or failure on the carrier's part the carrier should be made to respond fully in damages to the injured party or forfeit its charter.

There has been some question about Armour dealing in these commodities. That is, there have been counter statements. There is no question about it if inquiry is made. I believe they desisted, at least

to a certain extent for a short time, but since the Michigan car line hearings with respect to the forced use of the refrigerator car for transporting peaches and other perishable commodities have been held the findings of the Commission are before us, and they are to the effect that the charges were extortionate and unlawful. Still no final order has been issued, because, as I understand it, largely from lack of harmony among the Commissioners themselves as to just exactly what they should do, and just exactly what their jurisdiction in the premises is. I understand no final order has yet been issued.

I read from the Eighteenth Annual Report of the Interstate Commerce Commission, this being their last report. [Reading:]

The stockholders of Armour & Co. own the stock of the Armour Car Lines Company. Certain commission merchants claimed, in the course of our investigation, that Armour & Co. was dealing in the fruits and vegetables which were transported under refrigeration in the cars of the Armour Car Lines Company, and that its control of these cars gave it an important advantage over them in the handling of these commodities.

It is apparent that this would be the case if Armour & Co. does, in fact, deal in these articles. The right to use a car itself while denying one to its competitor; the right to name whatever charge it sees fit for the use of that car when used by its competitor; a knowledge of the exact location of every carload owned by its competitor, must give to Armour & Co. a most decided advantage, which, in these times of small margins, might amount to a practical monopoly in some sections. The Armour Car Lines Company denied, however, that Armour & Co. was engaged in the handling of fruits. This was so stated at our hearing last June. At a subsequent hearing in September the attorney of the Armour Car Lines said that Armour & Co. had finally withdrawn from business of that character, from which we infer that the charges of the complaining commission merchants might have been in a measure well founded.

It was conceded that Armour & Co. is engaged in handling dairy products, including poultry and eggs, also vegetables—among other things, potatoes—which are produced in certain parts of Michigan in large quantities.

Referring to the handling of dairy products, including poultry and eggs, they are admittedly engaged in that now. I see no law to prevent them from extending, and if they do not happen at this moment to be engaged in the fruit business I do not think it signifies anything. [Continuing to read:]

The movement of potatoes from this section during the winter months requires refrigerator cars, and shippers experience great difficulty in obtaining such cars. We are in receipt of complaints from the shippers of potatoes in Michigan, stating that Armour & Co. is buying in competition with them; that while they are unable to obtain cars, Armour & Co. sends its own cars to whatever point may be desired, and thereby secures a most important advantage in the item of transportation, which is gradually driving other buyers out of the market. These complaints were received too late for formal investigation at the recent hearing referred to. It is manifest that Armour & Co. might obtain that advantage if they saw fit to do so. The proper supply of cars often determines the ability to engage in the handling of a particular commodity, and the person who controls that supply has an incalculable advantage over his competitor who does not.

Mr. STEVENS. Have you heard of Armour & Co. attempting to do a vegetable business in any other section?

Mr. FERGUSON. Not recently; no, sir. [Continuing to read from the report of the Interstate Commerce Commission:]

Armour & Co., as is well known, is an extensive shipper of dressed meats and packing-house products, from 150 to 200 cars being sent east daily from its plant at Chicago alone. It is also well understood that this firm, in common with all other large packing houses, ships its products in its own cars, which in this case are those of the Armour Car Lines Company. The use of these cars is paid for upon a mileage basis, being at the rate of 1 cent a mile from the Missouri River to Chicago and three-fourths of a cent a mile from Chicago east, unless the traffic moves via Montreal, in

which case 1 cent per mile is paid, the allowance being for the movement of the car in both directions. Whether a particular mileage is or is not profitable to the owner of a private car depends largely upon the manner in which those cars are used. If in constant motion a given wheelage rate is much better of course than when use is less constant. These cars of the packers are moved east upon an express schedule, and the testimony tends to show that their owners require the prompt return of the cars, which usually come back empty. Without doubt, under the conditions of their use the mileage paid is extremely profitable. This sufficiently appears from the fact that the packing houses at Chicago have recently entered into a contract with the Pere Marquette Railroad Company, extending for a period of seven years, by which that company agrees that the present rates upon dressed meats and packing-house products shall not be advanced during the life of the contract—

I want to call attention there to the business wisdom that prompts them to look so far ahead as seven years to know definitely upon what terms they can do business with the railroads then, and how long they are willing to let us look ahead. They are not willing to let us know twenty-four hours ahead what we may depend upon. We are not asking anything but what they contend strongly for in their own interests. [Continuing to read:]

and that the mileage paid for the use of these cars shall not be reduced. In consideration of this, the packing houses each agree to deliver to the Pere Marquette a certain number of cars weekly.

Plainly, to whatever extent the amount paid for the use of these cars exceeds a reasonable compensation, the owner of the car is preferred in the matter of the freight rate to a shipper of the same commodity who owns no cars. This discrimination can only be prevented, so long as the use of private cars is permitted, by making the compensation for the use of the car which is paid to the owner of the traffic carried subject to public control.

It must not be inferred that all of the abuses springing from the use of the private car are enumerated above.

There is considerable more in the Eighteenth Annual Report of the Commission that will give more or less light on the situation.

Not wishing to occupy the time of this committee uselessly, and having gone into these practices in large detail before the Senate committee, and as I understand that evidence will be placed before this committee, I will conclude as briefly as possible, but would like to read one or two paragraphs from my opening statement before the Senate committee. [Reading:]

The private car-line companies, in the dual capacity of carrier and merchant, can never honestly serve the public, and to continue them in any form is an extremely dangerous departure from the now existing legal practices.

I think that is absolutely correct. [Reading:]

Further, such a law would double the duties of the already overburdened Interstate Commerce Commission, increase the almost nonunderstandable and multitudinous tariff schedules now filed with the Commission, and divide the responsibilities between two common carriers, so that it would be next to impossible to fix a responsibility.

Anybody that was honored by having an opportunity to listen to President Stickney, of the Great Western road, in his address last night, would understand what I mean by almost nonunderstandable and multitudinous tariffs now filed with the Commission, and to further encumber those tariffs and increase them by having contracts and agreements and private car-line tariffs piled up would render such schedules entirely valueless and would put beyond the reach of almost any man any definite knowledge so far as he may be able to obtain it from the tariffs filed. [Reading further:]

Again, by and through the close relationship existing between carrier railway company and carrier car-line company the channel would be provided for a thousand

and one evasions of any law now existing or proposed. The shipping public could not detect a manipulation through such a channel, and the Commission doubtless would not undertake of its own motion to do so. * * *

There is not one good reason why it should exist and countless reasons why it should not. To make common carriers of car lines by legislative enactment, if it can be done, in my opinion, would prove an ineffectual remedy, further complicate an already complex proposition, raise new questions for shippers to litigate at their own expense, give a great impetus to the car-line business, create a refrigerator monopoly, through which would be obtained the control of all food supplies, and build up a greater and more vicious trust than the world has ever known or dreamed of. If the car-line system be legalized and continued upon the same theory the now interested carriers and car lines are contending for the right to continue this system, they will next be contending for the right to extend this system to cover and include box cars and all other instrumentalities of carriage, and they will maintain then, as now, that the carriers can more economically provide themselves with equipment under the holding company system than for each carrier to own its own equipment, because of the varying demand for the different kinds of equipment at various seasons of the year. And if the privilege to continue the system with respect to one style of equipment is granted, I think it must be granted with respect to other kinds of equipment when demanded.

That the carriers have failed to perform their full duty to the public (their common-law duty of supplying cars), and that some certain locality has been neglected by the carrier with respect to furnishing cars, and that such localities have been served by these car-line companies at exorbitant and extortionate charges for the service is not a sufficient reason for legislation that would bring the independent dealer, who would wish to use the common highways, under the domination of his powerful trust competitor, thereby absolutely legislating into serfdom thousands of law-abiding citizens who are entitled under our Constitution to equal rights and protection in pursuing their chosen vocation.

The proper course, in my judgment, and of those that I represent, is to eliminate, root and branch, all these barnacles from our common highways, and to say to the carriers, "You, whom we have given sovereign rights and franchise, must discharge your full obligation to the public; the obligation you assumed when you accepted the franchise, and you can not delegate any part of that duty to special interests under any terms. You must keep these highways open alike on equal terms to all, and you must furnish all the necessary carrying equipment to protect the commerce originating on your several lines. Failing in this, you will forfeit back to the people the charter they gave you."

Any remedy designed to continue car lines will place independent dealers at such a disadvantage that they will be compelled to bow to the inevitable and yield up their business and independence to the great merchant car-line trust.

Mr. ESCH. Your remedy is a forfeiture of the charter of the car lines?

Mr. FERGUSON. I do not know that they have any charter.

Mr. ESCH. I did not understand your last language, then.

Mr. FERGUSON. The forfeiture of the charter of the carrier.

Mr. ESCH. The common carrier?

Mr. FERGUSON. Yes; if they fail to protect the commerce that by all laws of justice and right they should be required to protect.

Mr. RYAN. Private care lines, in your judgment, should be wiped out entirely?

Mr. FERGUSON. Entirely; absolutely. I think therein lies the only safety to independent commerce in this country.

Mr. ESCH. These charters are issued by the States and not by the Federal Government.

Mr. FERGUSON. I understand. There are many complex propositions that arise in the settlement of this difficulty, but I believe that they can all be met. I do not profess to be able to meet them myself other than to outline what may be a practical remedy and leave it for legal minds to work out and overcome the legal difficulties.

Mr. ESCH. We are glad to get your ideas on the subject.

Mr. FERGUSON. Here is further evidence with reference to their being dealers. Here is a letter I have, which I will read:

ARMOUR & Co., Chicago, Ill., May 13, 1904.

ARKANSAS VALLEY SHIPPERS' UNION, Van Buren, Ark.

DEAR SIRS: As we intend to handle quite heavily through the St. Paul office for our branches in this immediate northwest car lots of potatoes, onions, cabbages, and tomatoes, we should be pleased to have you quote us on any one of these by wire or letter on receipt of this, and write us fully, explaining if you will be shipping these items in car lots and to what extent, and what is your season for each.

We will buy this class of goods delivered at our different branches up here and will remit immediately on arrival in full for each car, or we would be willing to pay drafts on arrival and inspection of each car, as a matter of convenience for shipper.

Awaiting your prompt reply, we are,

Yours truly,

ARMOUR & COMPANY.
F. L. P.

This letter was returned to the B. Presley Company, of St. Paul, who are large handlers and dealers in the St. Paul market, and have handled for years a large portion of the products shipped by the Arkansas Valley Shippers' Union. Mr. Murphy, the head of the B. Presley Company, received the letter with this footnote.

Mr. Murphy: I have never answered any of these peoples' letters, as it seems to me they are getting out of their line. They ask commission men to use their cars and then turn around and try and rob them out of their business.

Yours, truly,

J. L. REA.

Mr. Rea is manager of that association. That is dated "Vanburen, Ark., May 19, 1904."

I would say that they did handle tomatoes in carload lots in our country. The relative difference between them and our firm is a mathematical calculation, or very close to it, at least, and would be about \$140.

Mr. ESCH. Is that exhibit in the Senate testimony?

Mr. FERGUSON. That exhibit is in the Senate testimony. I also want to offer a letter that is not in the Senate testimony. It is a copy of a letter written to the Mortenson Fruit Company, or to one of the firm, by the Fruit Growers' Express Company, one of the allied lines of the Armour car lines, the purpose of which was to place Fruit Growers' Express cars or the Armour Car Line cars in service in the fruit belt which is tapped and served by the Northern Pacific Railroad Company. Mr. Mortenson, one of the firm, is residing temporarily in West Duluth. This letter is dated Portland, Oreg., June 16, 1904, and is as follows:

We have received communication from your brother in our Los Angeles office advising that you were somewhat more inclined to use N. P. Bohn cars for shipments from Hilton to Chicago this year than our own. We regret to hear this very much, as we were under the impression that the service we gave you last year was entirely satisfactory, and hoped on this account that we would be able to do business with you again this year.

We understand that you claim that it costs about \$20 less to use the Northern Pacific car than one of ours. There surely must be some mistake about this, for the initial icing of a Northern Pacific Bohn car costs between \$25 and \$30, and if they use any ice between St. Paul and Chicago same is charged up against shipper. Of course if they do not put any ice in the car they will not charge for it, but we insist upon icing cars between these two points, as we believe it should be done, consequently we make a higher rate to Chicago than to St. Paul or Missouri River. Our rate from Milton to Chicago is \$45.

I think that distance is about 2,000 miles. Now, compare it with that \$73 rate from Gibson, Tenn., to Chicago, or the \$45 rate from Michigan to Duluth, or the \$55 rate from Michigan points to Denver, or the \$45 rate from Poseyville, Ind., a distance, I should judge, not much in excess of 150 miles—I don't know exactly.

As to the difference in size of cars of this company and Northern Pacific Bohn, would like to say that ours are just as wide, a little bit higher, and about a foot and a half shorter. We would like, however, to communicate with you further.

Yours, very truly,

FRUIT GROWERS' EXPRESS.
By S. A. HERING.

I only offer this to show that where there is any competition they would gladly serve the public at less than one-half of what they charge where the exclusive contracts obtain, and it may be fairly inferred, I think, that where they voluntarily serve the public they are doing so at a good fair profit. And if there be a profit in serving the Oregon fruit shippers on a basis of \$45 from Oregon to Chicago, what would you call it when they served the Poseyville melon growers on the basis of \$45 for about 150 miles? Some may call it profit.

In my opinion we need a remedy such as will require common carriers engaged in interstate commerce to furnish all the rolling stock and other instrumentalities for the safe carriage of freight originating on their several lines and forbid all such carriers hauling cars carrying freight of any and every description that are not owned or controlled by such carriers themselves or by other common carriers, bona fide such, and not created or existing for any other purpose, and prohibit the common-carrier industrial railroads.

I would provide that every charge incident to the safe carriage of freight shall be comprised in the freight rate as fixed and filed with the Interstate Commerce Commission, so that the same shall furnish full and complete data, from which it can be determined what it will cost to safely transport any article of freight from one to another given point, so as to leave no room for contention upon any item of such charges.

Further, I would prohibit common carriers engaged in interstate commerce, their officers or agents, dealing in any article of freight carried by them.

Next, provide that wherever a shipper claims to have been damaged by any act of a common carrier, subject to the provisions of the interstate-commerce act, such shipper may bring suit in the United States district or circuit court of his own residence and make the process of such courts in such case run to any and every point in the United States.

Also prohibit common carriers, or their employees, giving information about shipments while en route to any other than the consignor and the consignee and their agents and employees.

Lastly, place express companies under the provisions of the laws now existing and that may hereafter be enacted, relative to common-carrier railroads engaged in interstate commerce.

Mr. ADAMSON. I do not want to consume time in going over what has been thrashed out while I have not been here. Have you explained what your remedy is for the private car line abuses?

Mr. FERGUSON. I have just been going over that.

Mr. ADAMSON. I will read it then in your statement when it is printed.

Mr. FERGUSON. Now, I have done with what I have to say. I might say much more, but it would be a reproduction largely of what I have said before the Senate committee, and if it is desired to put any questions to me I will endeavor to answer them as intelligently as I can.

Mr. ADAMSON. I wanted an indication of what legislation you proposed, and I will be able to get that from the record.

Mr. DAVENPORT. Is it in accordance with the practice of the committee to permit a question or two from others than the members of the committee?

Mr. STEVENS. I think so; if you will give your name and say whom you represent.

Mr. DAVENPORT. Daniel Davenport; Bridgeport, Conn.

Mr. FERGUSON. I would like to ask, before proceeding to answer any questions for the gentleman, whether the same privilege of cross-examination will be extended to me?

Mr. DAVENPORT. I would like to ask the gentleman if he has legal advisers in his association?

Mr. FERGUSON. Yes, sir.

Mr. DAVENPORT. Is it your understanding that these private car lines are common carriers?

Mr. FERGUSON. No, sir.

Mr. DAVENPORT. Is it your understanding that they are engaged in interstate commerce?

Mr. FERGUSON. I do not believe the car lines are, except as the agents of the common carriers.

Mr. DAVENPORT. Then what authority do you think Congress would have to regulate their business?

Mr. FERGUSON. I do not think Congress has any authority to regulate their business. They have the right to place the carriers under any prohibition that in their wisdom may seem wise. That is the way we propose to reach the matter. I think that they have no right to regulate the affairs of the private car-line companies.

Mr. DAVENPORT. The furnishing of a car, renting of a car to a railroad company, you are not advised is interstate-commerce business?

Mr. FERGUSON. The renting of it? I do not think it is.

Mr. DAVENPORT. And the furnishing of ice to the common carrier to discharge its common-carrier duty is not an interstate-commerce business, is it?

Mr. FERGUSON. It pertains to interstate-commerce business.

Mr. DAVENPORT. So far as the carrier is concerned.

Mr. FERGUSON. So far as the carrier is concerned, yes.

Mr. DAVENPORT. But those who supply the ice—

Mr. FERGUSON. That is not interstate-commerce business.

Mr. DAVENPORT. I think you have been soundly advised.

Mr. ADAMSON. Are those cars used to carry freight from one State to another?

Mr. FERGUSON. Yes, sir.

Mr. ADAMSON. Are those conditions made in the contracts that are made between the common carriers and the private car-line companies—that the cars will be used in transporting commodities from one State to another?

Mr. FERGUSON. I do not know that it is set out in express terms. I would have to refer to the contracts.

Mr. ADAMSON. They are so used?

Mr. FERGUSON. Yes, sir; I think the contracts contemplate that.

Mr. MANN. The icing of these cars is necessary, is it not, in order to carry on this interstate commerce?

Mr. FERGUSON. Without the icing of those cars it is in no sense transportation.

Mr. MANN. It is one of the necessary agencies?

Mr. FERGUSON. Yes, sir.

Mr. MANN. And in that sense it is a part of interstate commerce?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. And it is only one contract you make—one contract covers everything? For example, you buy strawberries in Arkansas; you make one contract for carriage from the Arkansas shipper to parties at Duluth?

Mr. FERGUSON. Yes, sir.

Mr. STEVENS. And that includes all of the agencies for delivering the goods to the consignee in the proper condition?

Mr. FERGUSON. We always supposed so, but according to later-day railroad doctrine it does not.

Mr. DAVENPORT. A suggestion was made, and an inquiry put, that the icing of the car is a necessary facility in the transporting of freight. Is the furnishing of the ice, putting the ice in the car, any different from that of supplying coal to the carrier for its locomotives, and putting it in a car or other appliance which the common carrier may require?

Mr. FERGUSON. To my mind it is a necessary part of the service, as a whole, just as coal is.

Mr. DAVENPORT. And in the same relation legally?

Mr. FERGUSON. Legally; yes.

Mr. DAVENPORT. It has the same legal relation?

Mr. FERGUSON. Yes, sir.

Mr. MANN. I am afraid you have not been well advised, then.

Mr. FERGUSON. That is my own conclusion; do not charge it to my attorney. I had reference to that being a part of the transportation duty, and without the performance of it it would be impossible to transport.

Mr. MANN. The purchasing of coal by a railroad for its own use in an engine, and the purchasing of ice to put in a car, necessary to the carrying of particular freight, are entirely separate propositions.

Mr. FERGUSON. I did not understand that was the question. I thought it was with reference to the work of putting it in. I do not think that the question of icing itself has been passed upon by our higher courts. But I think the question has been before the courts in other cases, the question has been fairly up. For instance, there is the Stockyards case.

Mr. STEVENS. We have those cases here.

Mr. FERGUSON. I think it is the Keeth case, where the railroad company attempted to delegate to a private corporation the right to own and operate stock yards through which all competitors must discharge their cattle, and that company imposed such charge as it might see fit for that service. I think the court held that it was contrary to law and ordered the contracts canceled, notwithstanding the showing

was that a large amount of money had been invested in those stock yards.

The same plea of property rights was made in that stock-yards case as is made in the case of the car lines with respect to legislating away their rights to use these cars. I do not for a moment believe that property would be confiscated. I think that question would settle itself very quickly between the carriers and the car lines. I think if the use of these cars was prohibited by law, that, inasmuch as they are good business men, they would get upon some common ground and bargain for the sale of those cars.

Mr. ADAMSON. Do you not think it would be better and fairer, if they were useful at all, instead of outlawing them—destroying them—to regulate them?

Mr. FERGUSON. I think that is an absolute impossibility.

Mr. ADAMSON. You have three now running upon the same lines; you have the passenger car and the express car and the Pullman car. Why not add a fourth?

Mr. FERGUSON. They are engaged in a little different line of business, and in this case here the second common carrier becomes a merchant; it is essentially the same thing as the railroads of this country becoming the merchants and fixing the rate for independents.

Mr. ADAMSON. You understand we are not depending upon the act to regulate commerce for our authority, but upon the article of the Constitution that authorizes Congress to regulate commerce between the States, which applies to a Jew peddler or a yoke of steers as it does to the trains; we can regulate anything that does that, no matter what it is or who it is.

Mr. FERGUSON. In my opinion such a remedy would in a very short time result in a monopoly. I think it must result in a monopoly, a monopoly of the instrumentalities of carriage. I do not believe that is wanted, and I think the same system would spread and continue until it absorbed all of the equipment of the carriers.

Mr. ADAMSON. You say you have a monopoly now. We might give you a better monopoly.

Mr. FERGUSON. We have not a monopoly in respect to all territory; here and there there is a free corner left.

STATEMENT OF MR. GEORGE B. ROBBINS, OF CHICAGO, PRESIDENT OF THE ARMOUR CAR LINE AND DIRECTOR IN THE ARMOUR COMPANY.

Mr. ROBBINS. Mr. Chairman and gentlemen, I have here a few notes that I have prepared, which perhaps it would be best for me to follow.

The CHAIRMAN. Suit your own convenience.

Mr. ROBBINS. I wish to be understood in what I may say on the subject of private car companies to refer particularly to refrigerator cars, which comprise nearly or quite 70 per cent of the total number of private cars in use, and still more particularly to the equipment of the Armour car lines.

I have been in active charge of this branch of the Armour business since the early days of refrigerator cars, and a brief statement of their necessity and the development in the various industries dependent thereon may lead to a more intelligent understanding of the business in which private car companies are engaged.

Ferguson referred to being unable to get refrigeration rates at St. Paul. I do not see anything out of the way about that. Duluth is not an originating point for fruit, and naturally nobody there has a tariff. If he applied to our district office or to our home office he would have had a refrigeration tariff by return mail; they would have been only too glad to have sent him one.

Mr. STEVENS. I understood that he applied to the local office of the railroad company and they could not obtain them.

Mr. ROBBINS. I do not think that was the proper place to apply. The rates to Duluth are not posted there.

Mr. STEVENS. He could not seem to obtain by telegraph the information he desired.

Mr. ADAMSON. I am afraid you are laboring under a minimized impression of the importance of Duluth, which you would not have if you would read Proctor Knott's speech on Duluth.

Mr. ESCH. You not being a common carrier of course do not feel that it is incumbent upon you to publish your rates for that service?

Mr. ROBBINS. No; I do not know that there would be any objection, but we have not done so. With one or two exceptions, I have not heard of any complaint of our not doing so. If we filed them at Washington or in our local depot I dare say this complainant would not find the tariff in that case.

Mr. STEVENS. When do you make out these tariffs?

Mr. ROBBINS. The current tariff, as shown on its face, is good for the season only, and we generally make them up during the winter and spring for the coming season.

Mr. ESCH. Do they fluctuate much from year to year?

Mr. ROBBINS. No; they never advance; they sometimes are reduced. In our contract with the railroad companies we generally figure out what is a fair rate, considering all conditions, and we specify those rates in our agreements which shall not be exceeded, and frequently we have made reductions in those rates voluntarily. I can quote you cases of that, if you like. In Georgia, for example, previous to 1898 there were about five different car lines operated in that State. The rate of refrigeration was \$90 a car to New York. Beginning with 1898 we made an exclusive contract with the Central of Georgia Railroad to furnish all their cars, in consideration of which we made the rate \$80. In 1901 we voluntarily reduced the rate to \$68.75 a car, because the volume of business had grown a little larger and we were able to get a little cheaper ice. Further, in that connection, in California, which is the largest fruit-producing section in the country, turning out as it does 30,000 to 40,000 acres of fruit a year, previous to the time we operated the rate, for example, from Sacramento to Chicago was \$125 a car—

Mr. MANN. The rate for icing, you mean?

Mr. ROBBINS. The rate for icing. When we made that contract, which was the time we entered the business, we reduced the rate to \$90, a reduction of \$35.

Mr. STEVENS. Under an exclusive contract?

Mr. ROBBINS. Under an exclusive contract, on the theory that we or anybody else could do the business more cheaply when one company was handling it all than if it was distributed among several companies. Previous to that time there had been three or four different companies operating from California. In 1899 we reduced the rate

slightly by making it apply on more weight. In 1901 we reduced it again, voluntarily, to \$80 a car, making a reduction of 41 per cent in the rate from the time we went in there under an exclusive contract.

Mr. ESCH. For your icing in southern territory you of course had to ship the ice in from the North. How do you supply the ice?

Mr. ROBBINS. Ordinarily in the South we use manufactured ice.

Mr. ADAMSON. I was going to ask you if those ice plants at Columbus, Macon, and other places are not sufficient to accommodate you?

Mr. ROBBINS. Ordinarily they are, but in a season like last year there was not local ice enough in the whole southern country. We shipped from Pensacola and Jacksonville and from Lake Erie on the north. We bought all the ice we could find and had to go as far as Lake Erie to get enough.

Mr. MANN. Referring to these charges from Sacramento, would that also apply from southern California?

Mr. ROBBINS. No, sir; the northern California rate and the southern California rate are handled separately. They are two separate and distinct propositions.

Mr. RYAN. When you made a reduction of the rate from Georgia points to New York did you then have exclusive contracts with all the Georgia roads or only the one you mentioned?

Mr. ROBBINS. Well, we may not have had exclusive contracts with all the roads, but I think we did with the lines originating perhaps 90 per cent of the business, practically all.

Further, in answer to Mr. Adamson's inquiry, I am reminded that in 1898, when we first built the ice house at Marshallville and Fort Valley, we had to ship ice from Maine by vessels. That was in 1899, I should say. In that year, after we had filled those houses, there was not a single acre of peaches shipped out of Georgia. The peach crop was destroyed by frost, and that ice melted away.

Mileage alone does not afford reasonable remuneration on cars in the fruit business, owing to the unavoidable delay to equipment awaiting loading during the intervals between seasons. Strictly first-class refrigeration, by the use of suitable cars, full icing, and competent supervision, is invaluable to the shipper of highly perishable berries, fruit, etc.

After many years' trial it has been found that the only practicable method of handling the fruit and berry business of any large producing section satisfactorily is for the car lines to agree to furnish all the cars and ice required (in some cases to the extent of 5,000 individual cars) or be responsible for failure to do so, and for the railroad to agree to use such cars only.

Arrangements are then made, generally several years in advance, for equipment, ice supply, stations, and other facilities not obtainable on short notice. The car company does the refrigerating cheaper under exclusive contracts and agrees, in making such contracts with the railroads, not to advance the refrigeration rates, and frequently reductions have been made voluntarily when conditions warranted.

Expenditures have been made from time to time by our company until upward of \$15,000,000 have been invested in equipment, repair shops, icing stations, and other facilities scattered throughout the country.

Armour Car Lines, a corporation owning and operating cars, have never bought or sold any of the product transported in their cars.

Armour & Co. and Armour Packing Company have, to a limited extent, dealt in produce—particularly potatoes and apples, which do not require refrigeration—but have ceased dealing in produce since May, 1904. Armour & Co. and Armour Packing Company do a limited business in butter, eggs, and poultry as a natural adjunct to their packing-house business. This business is handled on equal terms with other shippers, and Armour Car Lines do not solicit any other business of this kind.

Now, in that connection I want to enlarge a little on that subject. The statements made here about dealing in the articles transported are absolutely incorrect. Armour & Co. or the Armour Packing Company or any Armour interests have never dealt in fruits. It was stated here to-day that they had, and were now dealing, and might again deal, in fruit. Absolutely the contrary is the case. Of course, in saying that I draw the distinction between fruit such as peaches, for example, and potatoes and beans, which we buy for canning, and other articles generally classed as produce. Our car business, in the main, is carrying highly perishable stuff, such as strawberries and peaches, in which we have never dealt in any way, shape, or manner. We never have bought or sold—any Armour interests—a car of Michigan peaches or a car of Georgia peaches, although that intimation, at least, has been very strongly thrown out here.

Now, I want to qualify that broad statement in one respect only. During a period summer before last California had an over-production of fruit. The markets were flooded and they could not place it. The shippers importuned us to help them out by trying to market some of that fruit at some of our branch houses at smaller towns, where they had no facilities to handle it. We responded in that direction and handled 160-odd cars during a period of about two months. None of those cars went to any of the large cities. They went to the smaller places, where carloads of California fruit had not theretofore been handled. Those shipments were handled on consignment for the benefit of the shippers to relieve a glut. We never have handled any such shipments before or since. The exception that I have just stated, while it may have been distasteful to the middlemen, the commission men, was highly gratifying to the shippers. It practically saved them that number of carloads of fruit, which otherwise would have been wasted. That point about our dealing in fruit and being a competitor has been dwelt on time and time again, and I would like to clear up the mind of anyone who has any doubt on that subject.

Mr. STEVENS. We have just had filed by Mr. Ferguson a letter signed by Armour & Co. with reference to a carload of tomatoes from Arkansas.

Mr. ROBBINS. Yes, potatoes and tomatoes.

Mr. STEVENS. Yes.

Mr. ROBBINS. That letter is dated May, 1904, and previous to May we did handle produce to a small extent. That letter fits exactly with my statements. That was before the date on which we quit handling produce. We did handle it in a small way previous to May, 1904.

I might add further in that connection, that of the produce handled by Armour & Co., a comparatively small part was loaded in cars with the Armour equipment. It consisted largely of beans and potatoes and apples, which did not require any kind of equipment, and was shipped largely in box cars, and Armour & Co. handled that in the same way as though the Armour Car Lines did not own any cars. It

was handled on its own merits. The tomatoes we sometimes use in connection with our canning business as we do beans. We put up pork and beans with tomato catsup; and of course we have and always will have to buy some of them for our own use, which I do not imagine anybody would object to.

Mr. STEVENS. What about the charge that you bought in Michigan in competition with vegetable buyers and sellers?

Mr. ROBBINS. We at one time handled some potatoes for Michigan. We never handled fruit or berries. That there was any discrimination in our own behalf by the use of our cars is absolutely untrue. Generally speaking, we did not undertake to furnish cars in Michigan for potatoes. Sometimes, if we had a few scattering cars on the line, they were picked up and used by the railroads, and in that event we did not distribute the cars. If an Armour & Co. shipper was waiting and got one of those cars, we could not distribute that car. The distribution was in the hands of the railroad. It was in the hands of the railroad, and we had nothing to do with it, and I well remember a case where our own produce department undertook to get relief in the way of cars, and they were simply told that they stood the same as any other shipper; that we did not have any cars to spare at that season, and they would get cars the same as any other shipper.

Mr. STEVENS. You do a dairy and poultry business?

Mr. ROBBINS. We do a butter, egg, and poultry business in a small way, and have for probably ten years, more or less, which we consider a natural adjunct to our packing-house business. Our branch houses sell poultry in the same way as they sell beef.

Mr. STEVENS. In doing that you utilize your refrigerating outfit for the transportation of those articles?

Mr. ROBBINS. We use our packing-house cars in distinction from our fruit cars. On the other hand, we do not solicit any other butter, egg, and poultry shipments in our cars. We do not try to do any competitive business. We simply load our own cars with butter, eggs, and poultry, as a matter of business. For instance, we will be shipping to-day 100 cars of packing-house products, and an order will come in for butter, eggs, and poultry, and that will be run into these cars the same as if it was beef. As to going outside and seeking other butter, egg, and poultry business, we do not do it, and never have done it. It is possible that sometimes, if a road gets short of its own equipment, it might appropriate one of our cars and load it with butter, eggs, and poultry; but we have nothing to do with it, and we would get nothing but our mileage out of it, and we never seek that business.

Mr. STEVENS. Refrigeration is necessary for butter and eggs on long journeys, is it not?

Mr. ROBBINS. Yes, sir; but that almost universally is supplied by the railroads themselves.

Mr. ADAMSON. If they charter one of your cars, they supply the ice?

Mr. ROBBINS. They supply the ice, and we get the mileage.

Mr. STEVENS. Do you sell butter and eggs and things like that in Mr. Adamson's country in Georgia?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Suppose you took them down from Chicago, you would perform the same refrigerator service on that that you would on anybody else's?

Mr. ROBBINS. Yes, sir; that is, the same service would be performed. We might not perform it.

Mr. STEVENS. But if you did perform it there would be the same profit on that as on anybody else's?

Mr. BOBBINS. Well, I might try to make it clear again. The butter, egg, and poultry business, as to refrigeration, is handled a little differently from almost any other commodity. The railroad rate is high on that, and in the rate they absorb the cost of the ice, which I believe is not done on any other commodity—certainly not on beef or fruit, with which I am familiar.

Mr. ADAMSON. Is the same car available to haul the butter and eggs and also peaches and strawberries?

Mr. ROBBINS. It might be fairly usable for it. But in our business we use the same cars for butter, eggs, and poultry as we do for beef and provisions, which is a radically different car from the one we use for fruit.

Mr. ADAMSON. So that you can not utilize the same car in hauling something the year around?

Mr. ROBBINS. Put it in another way. The beef car is not suitable for the fruit, and neither is the fruit car suitable for the beef.

Mr. STEVENS. Why?

Mr. ROBBINS. For one reason the beef car has racks and a roof from which the beef is hung.

Mr. STEVENS. It is a matter of construction?

Mr. ROBBINS. The beef is loaded out of a cooler at a temperature of about freezing and carried in cars having what we call closed bunkers, in which broken ice and salt is used, and a temperature carried only a few degrees above freezing, whereas for fruit cake ice is used, and a temperature of 42 to 45 or even 50° is all that is required. The fruit is also loaded hot out of the fields, and the fruit car has an ice capacity of about two and a half times as much as the cars of some of these railroads that are sometimes offered and sometimes used for fruit, which have about half the capacity of our fruit cars.

Mr. STEVENS. In transporting dairy products, for example, to Georgia you would handle, as I say, your own products just the same as you would anybody else's?

Mr. ROBBINS. Generally speaking, yes, sir; we would make no distinction.

Mr. STEVENS. And if there was any excessive charge or profit in icing or any service rendered on anybody else's products, that would be a discrimination against the products so charged, would it not?

Mr. ROBBINS. I think there is no refrigeration profit on anything that Armour & Co. ship under present conditions.

Mr. STEVENS. That is, you maintain that you do your refrigeration at cost?

Mr. ROBBINS. No, sir. As I have explained, the railroad companies do their refrigerating on the butter, eggs, and poultry at their own expense, and on the beef the shippers do their own icing and take their own risk. It is a regular year round business.

Mr. STEVENS. Then all the refrigerating you do is on the fruit?

Mr. ROBBINS. That is the main business; yes, sir; the main business. The business on which we make these stated refrigeration charges as printed is essentially the business of berries, fruits, and some kinds of vegetables.

Mr. STEVENS. What proportion of your equipment is necessary for the fruit traffic?

Mr. ROBBINS. In a general way we have about two-thirds of the cars in the fruit business and one-third in the packing-house business.

Mr. ESCH. How many in all?

Mr. ROBBINS. Six thousand fruit cars; 8,000 with the packing-house cars.

Mr. STEVENS. Would you estimate what proportion of the year these various cars are used in the business?

Mr. ROBBINS. The packing-house business is, of course, a year-round business, and the cars are in service most of the time. There is usually a dull time around Christmas when poultry takes precedence, and sometimes in the summer the shipments of beef are lighter; but most of the beef cars are in regular service. The fruit cars are in service, I should think, about three-fourths of the time and about one-fourth of the time out of service, principally in the winter.

Mr. RYAN. It was stated here that you have an exclusive contract with some of the railroads which gives you a knowledge of what other shippers are doing. Does that give you an advantage in the market on the dairy products you have handled as against the other shippers?

Mr. ROBBINS. We have no advice whatever of any other dairy shipper's business. If we handle anybody else's dairy business it is because our car is stolen for the purpose and we know nothing whatever about the shipment, and there would be no reason for us to get it. Neither do we get any such advice. The point I think you have in mind has been enlarged on somewhat—that in handling this fruit and dairy business we get advices on everybody's shipments, whether they are in our cars or whether they are not. That is not so. We have no advices except as to our own business—that is, the shipments made in our cars—to enable us to ice them en route.

Mr. ADAMSON. You do not handle other people's dairy products at all?

Mr. ROBBINS. No, sir; generally speaking, we do not.

Mr. RYAN. How would that apply to produce, potatoes, and apples, for instance?

Mr. ROBBINS. Potatoes, for example, are never refrigerated, and if they were loaded in our cars we, at the time at least, would have no advice as to the shipment.

Mr. RYAN. No; not about the icing, but as to the advantage that you might have on the market that might otherwise be taken by others?

Mr. ROBBINS. I think I touch on that point here in my statement especially.

Mr. MANN. Before you proceed, let me call your attention to the statement which was made here by Mr. Meade, in which he stated that if a railroad company with which you have an exclusive contract had any other carload of fruit on that line, you would be advised so that you could run your car in ahead of the other shipper's car, and thereby prevent the sale of his fruit?

Mr. ROBBINS. That is absolutely untrue. We have no advices as to anybody else's cars. As to our own cars, we need to know the destination on route to attend to the icing; but our produce department never knows of that information. We do not handle and never have handled berries and fruit, which comprise perhaps 95 to 98 per cent of the shipments in our cars, so that the inference that we would use

that information to spoil a market for anybody else is simply absurd on its face.

Mr. MANN. It seems to me the statement was made in reference to shipping peaches from Michigan to Boston.

Mr. ROBBINS. I do not see how that could apply, because we have never dealt in peaches; have never bought or sold a car of Michigan or any other peaches, and would have no incentive whatever to put a car into Boston or anywhere; and if a shipment was made in somebody else's car we would not know anything about it, and neither would the department handling our produce—our produce department—know anything about the destination of the shipments of produce, even in our cars. I will come to all that directly.

The agitation against the car companies has been mainly instigated by leagues of commission men, who generally handle on an arbitrary commission basis the fruits, berries, and produce consigned to them. Only in rare instances are they the owners of fruits, berries, or produce received by them in our cars. Among the leaders in this agitation is Mr. Meade, of Boston, who has appeared before this committee. He is vice-president of a refrigerator car company with a million dollars capital stock. I am reliably informed that his company has approached officials of railroads with which our company has dealings and attempted to induce them to build their own cars on a royalty under patents owned by his company.

If the committee will bear with me for a moment I would like to refute a few of the statements made by Mr. Meade to this committee. He stated that Armour & Co. had gone into lines of business in which the fruit and produce men are engaged to such an extent that at the present time the Armour interests control the price of the perishable fruit products of this country. The fact is, Armour & Co. never have been in the fruit business, and have withdrawn from the limited produce business heretofore handled. Furthermore, neither Armour & Co. nor any of their interests have ever dealt in over 1 per cent of the produce carried in Armour cars, and that the control of the fruit produce business by them was had, or even contemplated, is absurd.

He claims Armour & Co. can go into Michigan and buy a car of potatoes, bring it to Boston, get a tariff of \$70, and sell it at a profit of \$35 when others would lose \$35. This statement is most extraordinary, as potatoes are not refrigerated and we seldom furnish cars for them, and even when we do the total gross revenue would amount to \$12 to the car line for nearly a month's rental for the car and Armour & Co. would have no margin above anyone else to work on in handling this Michigan product.

Mr. MEADE. My testimony was taken wrong on that point. It was peaches that I spoke of, and the testimony should read "peaches" instead of "potatoes."

Mr. ROBBINS. Peaches? Well, I will take it that way, then. We never have dealt in a carload of peaches.

Mr. MEADE. My testimony, a copy of which I have here in my pocket, was to the effect that we have this situation confronting us, that Armour & Co. can go into Michigan and to this.

Mr. ROBBINS. Likewise, any railroad can go into any business. His statement to the effect that the charge of icing a car of peaches from Michigan to Boston was \$20 in 1900, and that when the Armour car lines obtained an exclusive contract with the railroads the price was

advanced to \$65, and later to \$70, is also misleading, for the reason that it was brought out in the testimony before the Interstate Commerce Commission in the Michigan hearing that when the \$20 rate was in effect the railroad companies absorbed the cost of the initial icing as well as icing en route, and our charge was for supervision, responsibility, general expenses, etc. When we were later compelled to supply the ice ourselves, as was the case in 1903, the rate was advanced \$35 to cover the cost of ice, and consequently the car line's profit was not increased by the advance in rate.

I would like later to submit some further testimony on that.

Mr. Meade's charges that the railroads bind themselves to furnish us information in regard to the cars or shipments of others is without foundation, as the contrary is the fact. The railroads furnish our car lines certain information as to our own cars only, to enable us to attend to the icing and tracing. This information is never given Armour & Co. or used except for the benefit of the owners of the shipments.

His intimation that Armour & Co. might go into his line of business to-morrow, buy up the peaches, and cut the throats of the commission men is also without foundation and purely theoretical and has no force or argument.

He states that we have the power to raise rates at will, or furnish cars or not as we see fit. The contrary is the fact, as contracts with the railroads forbid advance in refrigeration rates and compel us to furnish all the cars required, and to all alike without discrimination, which is invariably done.

The statement made by Mr. Meade, that we say to the railroads they must make an exclusive contract with us or lose so many carloads a week of freight, is imaginary. We make all fruit-car contracts on the merits of the fruit-car service, and without any connection with the packing-house business.

He further stated that he had no means of knowing our charges. These refrigeration charges are printed and widely distributed among the shippers and railroads, and are to be had by anyone upon application.

The statement made by Mr. Meade, that the car company discriminated against the private shippers in favor of the Pennsylvania Railroad by charging that company only \$2.50 for icing cars at Jersey City when a private shipper was charged \$5 per ton and iced his cars or not as we saw fit, is also without foundation. The fact is we charged the Pennsylvania Railroad and outside shippers the same price of \$4 per ton for ice at Jersey City, and are compelled by contract to ice all cars without discrimination, which has been done.

The facts in the Coyne Brothers' case, quoted by Mr. Meade, are as follows: The shippers knew the refrigeration charge and were willing to pay it, and shipped the car of cantaloupes on consignment. The receiving commission company refused to pay for the refrigeration, but nevertheless charged the same in its account of sales against the shipper. We sued the commission company (Coyne Brothers) for the amount of our charge and obtained judgment therefor.

I would say that I have a copy of the account of sales here showing that they received that refrigerator charge, that they did not pay us, and never have paid it up to this date. The shippers were not in sympathy with the movement, and readily agreed that they had selected our car, knowing what the charge was, and desiring the service, and

expected to pay for it. The commission man refused to pay it to the railroad for our benefit, although he has charged it in his account of sales.

Mr. STEVENS. The shipper pays the charge in the last analysis?

Mr. ROBBINS. Yes, sir; the shipper is the one that selects the service and decides on the car and wants the service at whatever expense, and as a rule is willing to pay our extra charge—supposing there is one—because he gets better service.

Mr. STEVENS. Supposing he ordered other cars on other roads where you have an exclusive contract, he could not get them, could he?

Mr. ROBBINS. No, sir; no, sir. On the other hand, if we did not have such an exclusive contract, and he could not get any cars, he would not be able to make his shipment.

Mr. STEVENS. You had better proceed with your statement, I think.

Mr. ROBBINS. The report has gained some circulation that the car companies in some way are used as a means or device for the payment of rebates to shippers. This I desire to deny in the most positive and sweeping way. In that connection I might add that I am equally acquainted with the transportation and traffic affairs of Armour & Co. and speak advisedly on that subject. I am in charge of that branch of the business of Armour & Co. as well.

Mr. STEVENS. You mean to say that it is no advantage to Armour & Co. to have their connection with this car line?

Mr. ROBBINS. Not in any discriminatory way. It is simply an outside investment on its own merits, the same as it might be in a dozen other lines of business. We are in the business to make a reasonable profit. We do not claim anything else. But we do deny that there is any unreasonable profit or margin in the rates. Our rates are not fixed by ourselves solely. We never yet have been able to get an exclusive contract with a railroad until we have agreed that our charges shall not exceed a certain figure, which is supposed to be reasonable.

Mr. ESCH. In that connection Mr. Ferguson cited several instances of icing charges from Gibson, Tenn., to Memphis and from Poseyville to Chicago. I would like to have an explanation of them.

Mr. ROBBINS. The fact is that on the Northern Pacific, in Oregon, there is an ample supply of cheap ice, which we buy and pay for as cheap as we can get it. That is low-priced ice. What it costs I do not remember. It is an ice country. The Northern Pacific rule is that they make no charge en route to St. Paul. Icing is performed just the same, but they absorb it in their rate. It is one of the peculiar practices of that part of the country. I do not know that I can state how it originated, but it is there just the same. The result is that in icing a car from Oregon to Chicago, instead of taking the distance into consideration and making a high rate, we take the cost of the ice into consideration, and with free ice en route we make a low rate. On the other hand, the tomatoes from Tennessee are shipped from small stations where there is no local ice, and ice has to be shipped in there frequently in lots of a few pounds at a time with great loss from shrinkage, and we have to pay the icing en route on that business, which is also expensive there. So that the comparison in difference between the two rates, Oregon on one side and Tennessee on the other, is not a comparison at all. It is absolutely diverse from the principle on which our tariffs are established—our charges are based on the cost of the service.

Mr. ESCH. He compares it with the Illinois rate which, where there was no contract, was only \$15, I think.

Mr. ROBBINS. That \$15 matter I had never heard of until yesterday, and I can not explain it. He does not give any car number, but I can say this, that it is just on the same principle that you do not understand how one man pays \$5 for a horse and another man pays \$300.

Mr. ESCH. He said that you charged \$50 for the same service for which another man charged \$15.

Mr. ROBBINS. There is no doubt that that may possibly have happened in a case. The Illinois Central Road may have picked up one of our cars with a small tank and they may have put a ton or so of ice in it. That is a thing that often happens, and they do not ice again en route. The comparison is entirely valueless without particulars; just as valueless as a comparison between the Tennessee rate and the Oregon rate. The conditions surrounding them were probably radically different.

Mr. ESCH. How about the Poseyville rate?

Mr. ROBBINS. The Poseyville rate on canteloupes to Chicago \$45, as stated. They originate in a country where there is no ice, and ice has to be shipped in there from Evansville, and the cars are re-iced once en route, and our profits on canteloupes from Poseyville are simply in line with our profits from anywhere else, which we insist are reasonable. The fact that the refrigerator charges may have been greater than the freight charges cuts no figure. A railroad might switch a car under refrigeration for \$5, and it might cost us \$25 to put in the initial ice. The initial ice is the important figure in making a rate. The distance cuts no particular figure. We do not consider the distance. The question is what the cost is—the expense. It has been claimed here that the connecting railroads, such as the Northwestern, the St. Paul, and others, were willing to furnish cars for Michigan business. I would like to read a short extract from the testimony of Mr. Rowley, general freight agent of the Michigan Central Railroad, at the late hearing on this subject.

Mr. DECKER. You used largely the M. D. T. cars on your line prior to the Armour Car Line contract for this fruit, did you not?

Mr. ROWLEY. No, sir; only to a small degree.

Mr. DECKER. What cars did you use?

Mr. ROWLEY. Such cars as we could get from connecting lines.

Mr. DECKER. Was your greatest trouble in securing cars for the fruit business as to those going to eastern points, like Boston and New York.

Mr. ROWLEY. No, sir; the difficulty did not seem to be confined to any one direction. There was trouble at all times in all directions.

Commissioner PROUTY. Your judgment is, that without a contract with the Armour Co., as you are situated to-day, you would have difficulty in supplying the Michigan shippers?

Mr. CROWLEY. We consider it would be impossible.

There has also been considerable testimony on the question of comparative value of our refrigeration, particularly from Michigan. I would like to read from the evidence of a few of the witnesses, who were shippers, at that hearing. I will first read from the testimony of Mr. Gurney:

Mr. URION. State to the Commission in your own way and in your own language your feeling with respect to the installation of Armour cars on the line of the Pere Marquette—the advantages and disadvantages.

Mr. GURNEY. Well, it is a great advantage to the growers in our place and county. We have only one railroad, the Pere Marquette. In 1899, 1900, and 1901, when peaches

came on with plums and cherries, we could get no cars. The railroads knew that, for instance, at Grand Rapids and at different places where there were two roads, if they did not give the buyers the cars some other road would, and once in a while we could get an old car—something that the buyer would not have—and the result was that in 1899, 1900, and 1901 we could not get any buyers. Grand Rapids had plenty of buyers, and they could pay a dollar a bushel, and we had to ship ourselves and get nothing. The reason we could not get any buyers was they would not come there and we could not get any cars. I sold my peaches one year, I think it was in 1899, to a party with the understanding that I was to have so much a bushel, I think it was a dollar, provided he could get cars. He took quite a number of cars and then told me that he could not take any more, that he could not get cars.

Mr. URION. Then the installation of these cars has resulted in diverting shipment from your community from Chicago and other points and far distant points?

Mr. GURNEY. Yes, sir; since the Armour cars came we could get good service and plenty of buyers, and we get our peaches through to Connecticut, Boston, New York, and Columbus, and do not have any trouble.

Mr. URION. But you have to pay a refrigerator charge?

Mr. GURNEY. But the refrigeration charge does not amount to anything compared with service. Since the Armour cars came in 1902 and 1903 I have made 50 per cent more as a grower than I did before. I never got a refrigerator car that I was dead sure would take my fruit to destination until the Armour people came in.

Next I will read from the testimony of Mr. Corbin:

Mr. URION. Prior to 1902 and 1903 where was the bulk of stuff in your community shipped?

Mr. CORBIN. Most of it in those years, by not having refrigerator cars and buyers there to buy of us, the bulk of the crop was shipped to Milwaukee and Chicago.

Mr. URION. Were they regarded as markets that were as good as outlying markets?

Mr. CORBIN. No, sir; it has been the talk of the growers that they wished they had some way they could load cars and ship them to different points so as to relieve the glut that happened at Milwaukee and Chicago, which we got in 1902 and 1903.

Mr. URION. Did it result in reaching the East?

Mr. CORBIN. Yes, sir.

Mr. URION. Did it result in additional profits, and enable them to get better prices?

Mr. CORBIN. Yes, sir.

Mr. URION. Taking all into consideration, will you state to the Commission whether you regard the refrigeration rate of the Armour Car Line as excessive?

Mr. CORBIN. From a business point of view, rather than to go back to the way it was before this, I think the rate is not exorbitant at all. I would rather pay the prices to-day and be sure of the service we get.

Next I will read from the testimony of Mr. McCarty:

Mr. McCARTY. I have been in business there about forty years, and have been a peach shipper, and of course we had had lots of trouble shipping peaches and getting them shipped to a distance. We had to ship them locally a great deal and met with loss. Since the Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them.

Commissioner PROUTY. Did you pay the full charge?

Mr. McCARTY. Yes, sir; from \$35 to \$50. It paid me to do it. I shipped to Mr. Fernald, as good a man as there is in New York. He said: "Don't ship any way but in the Armour cars; I would rather pay it myself."

Next I will read from the testimony of Mr. Flood:

Mr. FLOOD. Since we have got better service from the Armour folks we are able to extend our markets. Prior to that we had to dump almost everything into the Chicago and Milwaukee markets, and during the time we had most fruit there was a congested condition. I know that since the Armours put their cars on we have had a better system and we have buyers there. Prior to that they would say, 'We can not come here and buy because we can not get cars to make our markets.'

Next I will read from the testimony of Mr. Loomis:

Mr. LOOMIS. My experience has been the same as the rest of them. I have been shipping twenty years. The shipments have got to be taken care of as they go through, and until Armour & Co. took care of them we did not have that service.

Mr. UNION. Has the profit to the growers and shippers in your community been enhanced by the use of Armour cars, notwithstanding the refrigerator charges?

Mr. LOOMIS. It has.

Mr. UNION. They have made more profit by the payment of the refrigerator charges and getting the service than they did under the old arrangement?

Mr. LOOMIS. Yes, sir; because buyers came in there, and we could not have them when we did not get the cars and service.

Mr. STEVENS. You will need more time, I imagine, to finish?

Mr. ROBBINS. Yes, sir; I have some more material here.

Mr. STEVENS. Very well, we will hear you further.

Thereupon the committee adjourned until Monday, February 6, 1905, at 10.30 o'clock a. m.

WASHINGTON, D. C., *February 7, 1905.*

The subcommittee met at 10.20 o'clock a. m.; Hon. Ferd. A. Stevens in the chair.

STATEMENT OF MR. F. J. REICHMANN, VICE-PRESIDENT AND GENERAL MANAGER STREETS WESTERN STABLE CAR LINE, CHICAGO.

Mr. REICHMANN. Mr. Chairman and gentlemen of the committee: I am vice-president and general manager and a member of the board of directors of the Streets Western Stable Car Line, which is a corporation of the State of Illinois.

Mr. STEVENS. What is the corporation and what does it do?

Mr. REICHMANN. We are chartered to build for sale and hire special stock cars for the transportation of cattle, horses, or all live animals.

Mr. STEVENS. How extensive a business do you have?

Mr. REICHMANN. We own and lease to the railroads now between 8,000 and 9,000 cars. That varies according as we dispose of cars, at times sell them outright. We manufacture these cars and sell them or lease them.

Mr. STEVENS. Just state the course of your business. For example, beginning now, the first of the year, about how does your business run during the year? In what way do you have connection with the railroads or shippers?

Mr. REICHMANN. If there is no objection, I think that I can present our position very briefly by following the outline that I have drawn here. I think I can present it more connectedly, and I will refer to my notes, although I shall not confine myself to them. If there is no objection I would like to proceed on that line.

Mr. STEVENS. Proceed in your own way to expedite matters.

Mr. REICHMANN. I come before the committee not as a lawyer to discuss the legal points that may be involved in the regulation of the so-called private car lines, but as a business man, having had twenty-five years experience in railroad matters, and which has nearly all been devoted to the special freight service of railways and in matters connected with and the management of various private car-line enterprises, to discuss the purely operating or business phases of these organizations, and to correct some misstatements that have been made, especially with regard to the private stock car lines with which I am at present connected.

I deem it important at the outset to make a clear statement to the committee of the various methods by which the railway common carriers obtain cars for the transportation of commodities. They obtain them, first, by purchasing them or building them at their own car manufacturing plants; second, by leasing them under what is known as the car-trust plan, under which the title to the cars remains with the builders or vendors until the car-trust notes issued under a contract of sale or lease have all been paid; third, they obtain cars from private owners on what is known as regular mileage (a common rate established by all railroads in a given territory for the use of private cars, the rate varying somewhat as between refrigerator cars, stock cars, and so forth), and to meet certain traffic contingencies an established rental per month, or a guarantee of a minimum earning per car per month is exacted by the car owner and allowed by the railway. All cars, regardless of how they are obtained by an individual railroad, are interchanged between railroads, and settlement is made by the operating company directly with the car owners. Now, in speaking here of cars I mean freight cars. That is not true of passenger equipment, as you gentlemen may know.

Let me cite briefly what the Interstate Commerce Commission said on this point. I will quote only the earliest decisions, which I understand have been sustained by the decisions of the Supreme Court. In the Worcester Excursion Car Company *v.* The Pennsylvania Railroad Company, in the Third Interstate Commerce Commission Report, they say that the railroad company may acquire cars by construction, by purchase, or by contract, for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers. In the Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company (5 I. C. C. Rep., 415) they say:

It is the duty of the carrier to equip its road with the means of transportation, and in the absence of exceptional conditions those means must be open impartially to all shippers of like traffic.

I do not know how much these earlier rulings may have influenced the extension and development of the private car business; but, regardless of whether they correctly express the legal status of these companies, there is no doubt they were accepted as the law, and they were certainly in line with current economic tendencies in the transportation business of the country.

The most lucid, and to my mind the most accurate, statement which has been made regarding the growth and development of the interchange of cars and the system of hiring and compensating owners for cars in this country we find in the Fifth Annual Report of the Interstate Commerce Commission, 1891, beginning at page 34, from which I will quote briefly:

Under the turnpike theory of "tolls," the owner of the vehicle would pay to the owner of the road the sum fixed by law, or by agreement between the parties, for the privilege of passing the vehicle over the road. Then if the owner of the vehicle were himself a carrier he would make his own charges to his patrons. Since, however, the railway company has become the exclusive carrier over its line, as well as the owner of the road itself, the idea of "tolls," in the sense of a payment to the company by the private owner of a car for the passage of the car over the road has become for the most part obsolete.

After the necessity for the exclusive control of a single company over the transportation and general operations of the railroad became finally settled, the use of other cars than its own was, during a considerable period at least, unusual. As soon, however, as the sagacity of railway management, prompted by the demands of commerce, undertook the establishment of through routes of trade and travel over connecting lines the necessity for the passage of the cars of one company over the lines of another to save the trouble and expense of breaking bulk or transferring the contents became clearly apparent.

But in the adjustment of the relations between the owner of the road over which the car was to pass and the owner of the connecting road to which the car belonged the idea of a payment of toll for the carriage of the car by the latter to the former was discarded and the idea of a hiring of the car by the former from the latter was adopted. Under the conditions of interchange of traffic and of cars between connecting lines, where the use made by each of the cars of the other or others would in the long run be nearly equal, the amount agreed to be paid for such use would not be very material. A striking of balances between the mutual accounts would bring the parties out pretty nearly even. Whether or not under the circumstances the amount agreed to be paid for the hire of cars is actually more or less than a fair compensation for their use is a comparatively unimportant question. The question, however, becomes one of great importance in connection with the use of cars belonging to private shippers in transportation over lines of railways.

In the growth and development of railway traffic it became evident that many commodities might be transported to much greater advantage in certain kinds of cars specially adapted to the character and peculiar qualities of the particular traffic than in the ordinary cars furnished by the carriers. The latter did not always respond to the demand for improved vehicles of special pattern, but frequently failed to provide them in their own equipment. Hence, by agreement between shipper and carrier, the former often undertook to provide his own cars for shipment of his particular commodities.

It will be seen from this statement of the Commission that the first railway freight cars, being an improvement over the best means of transportation prior to the advent of the railway, were ample for the satisfactory transportation of the staple commodities that were produced during the early period of railroads; and it was but natural that railway managers should have guarded jealously the carriage of commodities in their own cars only.

The transportation problem grew more complex, however, as industry became more diversified and the genius of American producers in such a vast country, with its varying climate, brought forth commodities of a more perishable and destructible nature, demanding cars adapted to the transportation of particular commodities. The railway managers were now confronted with the more intricate problems of transportation. They must either forego and relinquish the earnings that were sure to follow through this great diversion of industry or they had to take the risk of providing special cars, assuming the entire expense incident to the development of this special traffic, without any substantial guarantee that the special cars would continually be used by the producers of commodities to be transported in them. The struggle was a brief one, and it resulted in the railway managers saying to the producers of these special commodities (on the theory, no doubt, that any article of commerce is not fully produced until it is in the hands of the consumer): "You are more familiar with the kind of car best suited for the transportation of this commodity and are therefore best qualified to provide the car required. If you will do this, we will allow you a fair compensation on your additional capital invested." In effect, said to them that they must provide cars as a part of their plant. By doing this the producers were enabled to avail themselves of more extended markets and enabled to ship over the largest number of railways. This gradually led up to special com-

panies being organized to supply the smaller shippers with improved cars that would facilitate the more economical and more perfect handling of special commodities and practically placed them on the same basis as the large car-owning shippers. The improved stock car resulted from a desire on the part of shippers and handlers of live stock to eliminate the yardage expense and to reduce the shrinkage of live stock in transit to a minimum by the more humane treatment of cattle.

But perhaps a still stronger influence with the railroads was the question of limiting their liability, being unwilling to assume any greater risks than were involved in the transportation of the ordinary staple commodities. They compelled the owners of the products to assume the risk of loss and damage to these commodities while in transit in these special cars, and here, again, through the free operation of the laws of trade, independent companies offered to furnish this added protection to the smaller shippers for an additional charge.

I dwell upon this matter in its historical aspect largely because the contention has been very strongly made that originally the railways made a charge in addition to the freight rate for the transportation of these special cars; that the departure was in the nature of granting a concession amounting to a rebate to the industries that have provided themselves with these special cars. I maintain that this charge was originally made because of the determination of the railway managers in the early period of railroading to confine the transportation of commodities in their own vehicles, and was really intended as a penalty or fine upon a person presuming to furnish his own cars. Nothing is clearer than that the best results could be obtained by the shippers and railroads working in harmony to provide the most efficient car that would transport commodities at a minimum expense, damage, shrinkage, and loss; and that it was a similar improvement in transportation matters as that adopted by the railways when they agreed to interchange cars between themselves, and the operating company to compensate the owning company by allowing what they believed to be a fair return for the capital invested.

This specialization in the carrying trade, as well as many others that might be cited, such as the establishment of what is known as the Cooperative Fast Freight Line, providing for the through transportation of commodities between great distances over a number of connecting railroads under a joint traffic agreement, the establishment of special companies for handling express matter, and so forth, and which I do not think it necessary for our purpose to go into; this specialization, I say, was a mere application of the principle of the division of labor to the carrying trade of the country; and it is as firmly rooted in our commerce to-day as is the production of commodities requiring special cars for their transportation.

I would like here to illustrate that a little bit, but perhaps I had better go right ahead with what I have to say, and then the illustrations can come out in answer to questions that you gentlemen may ask me.

That these arrangements would have a strong influence upon rates, discernible to the far-seeing railway managers, was perhaps another reason why the extension of private cars should have been originally strongly opposed. For it will be readily seen that the private car was an added strength to the so-called weaker lines, enabling them to

secure a large traffic far in advance of their financial ability to provide an ample equipment. In other words, it made the traffic more competitive between carriers; and of course the converse of the proposition must also be true, that according as cars can be confined to a few hands, the greater will be the monopoly of the carrying trade. There is, however, no monopoly in the car; that rests in the railroad which is responsible for its proper use.

I know of no section of the country and of no railroad whose traffic does not vary sufficiently to call into service for brief periods additional equipment which it would not pay individual roads to provide and keep idle the larger part of every year and in some years have no use for whatever. Owing to the extreme variation in traffic conditions, the widest possible latitude should be permitted railroads for interchanging and obtaining cars, and any legislation restricting the power of the railroads in this respect will undoubtedly result in great hardship to the shipping public as well as have a disastrous effect upon prices and industry.

In this connection I would cite the live-stock traffic that is shipped into large central markets like Chicago, and so forth, from a vast and extensive territory without any means for controlling the volume of the movement. Here the need of a very elastic arrangement for obtaining cars is essential. The supply of cars at such markets is of far more importance than may appear to the casual observer. In my opinion, without the assurance of an ample car supply at these large central markets to protect the shipments of exporters and the smaller shippers who do not own cars, the markets would be very much narrowed and the purchase of cattle would be more nearly confined to industries having slaughtering facilities at these points. Is not that plain?

MR. STEVENS. Do you mean to say that unless this special service was rendered, the small—

MR. REICHMANN. Yes, sir. I am going to enlarge on it to show you that private-car lines with their large equipment of special stock cars operating in interchange upon practically all of the railways in the United States on a regular mileage basis have a large number of cars constantly arriving at these large central markets, so that when there is an increased demand for outward-bound shipments from these markets the cars can be easily applied where most needed. The yardage expense and loss by shrinkage is so great when cattle are held over that shippers do not generally enter the markets until they are assured of a supply of cars to move them promptly.

This arrangement works automatically and gives good satisfaction. It is generally conceded by the railroads that they need the private stock cars for the proper handling of the live-stock traffic. In this connection, I desire to refer to abuses complained of by the Interstate Commerce Commission in its Seventeenth Annual Report for 1903. The report reads, at page 24:

The average mileage of through stock trains upon the principal carrying lines to the East exceeds, it is said, 100 miles per car per day, yielding to the owner of such cars a return of over 60 cents per car per day. This return is three times that allowed for the exchange of railroad cars, most of which cost more than the average value of private stock cars. As much as 85 cents per day, it is asserted, has been received for several consecutive months within the past year by the owners of private stock cars employed in through runs as above stated. To insure the use of these stock cars by leading shippers, who are often prominent packers, it is charged to have been the practice of the concerns owning such cars to divide with the shippers the mileage

received from the railroad companies, a practice which operated to the same effect as the payment of rebates to such shippers, thus placing their smaller competitors at an unfair disadvantage. Such unjust discriminations would not be possible if the car owners were restricted to an allowance which would give them only a fair return upon their investment.

Now, since we are practically the largest private stock-car lines, having probably the best arrangements for handling and interchanging our cars, making it possible to release them where, in our judgment, it would improve the transportation in other directions, and we have got perhaps 60 per cent—I will go further than that, possibly 75 per cent—of the live-stock traffic from Chicago markets into Eastern States points, largely Atlantic seaboard points, and a large part of which of course, is for export, it seems to me, Mr. Chairman, that any public body should not attack a corporation of a State, even though its jurisdiction were positively established, without having the facts to warrant it. The statement of the Commission is taken almost bodily from reports made by Mr. J. W. Midgley, a so-called expert, who testified at the October hearing in Chicago that his entire experience had been in traffic matters, and that he had had very little experience as a car man when he took hold of the car proposition—I mean the railroad-car proposition very largely—at the request of certain railroad men two or three years ago.

I want to say that this statement of the Commission is a purely imaginary statement that has no doubt been imposed upon the honorable Commission and which I desire to disprove by submitting a certified statement of the number of cars and the average earnings per car of the Street's Western Stable Car Line in the eastern territory and for the period referred to. The Commission or their informant failed absolutely to recognize the fact, which should have been familiar to anyone undertaking to inform the Commission upon the subject, that the cars of private companies, so far as the live-stock traffic is concerned, are resorted to very largely when there is serious congestion of traffic on the roads in the eastern territory, due to various causes, among which the most striking are snow blockades or severe winter weather, when empty cars can not be returned promptly and the private companies are compelled to send a very much larger number of cars into the territory than would be needed if cars were moved freely. The return movement of these cars is always very slow.

Mr. STEVENS. You get paid for both ways, do you not?

Mr. REICHMANN. Yes, sir. We have absolutely nothing to do with the traffic. We hire the cars, and they pay us mileage on each car.

Mr. STEVENS. It does not make any difference to you how slow they are in returning them, then?

Mr. REICHMANN. Yes, sir; certainly. We are paid on mileage, and we are just the same as anybody else traveling on mileage. If he could travel all the time his earnings would of course be reduced by delay.

Mr. ADAMSON. You have nothing to do with the transportation of the car either way?

Mr. REICHMANN. No, sir.

Mr. ADAMSON. Or the freight?

Mr. REICHMANN. I will come to that in a moment. I desire to submit to the committee a statement of the average number of Street's Western Stable Car Line cars, Hicks stock cars, and Canda Cattle

Company cars upon the railroads engaged in interstate traffic from Western States points to Eastern and Atlantic States points, covering all cars engaged in said long-haul traffic, the total gross earnings of these cars, as reported by the railroads operating the same, and the average earnings per car per month. This statement is signed and sworn to by Joseph J. Schneider, the accountant of Street's Western Stable Car Line.

The table referred to by Mr. Reichmann is here inserted in the record as follows:

Statement of the average number of Street's Western Stable Car Line cars, Hicks Stock cars, and Canda Cattle Company cars upon the railroads engaged in interstate traffic from Western States points to Eastern and Atlantic States points, covering all cars engaged in said long-haul traffic, the total gross earnings of these cars as reported by the railroads operating the same, and the average earnings per car per month.

Month.	Total gross earnings.	Average number of cars.	Average earnings per car.
1902.			
March	\$10,488.17	1,301	\$8.06
April	6,464.58	997	6.50
May	7,265.04	784	9.27
June	7,975.69	773	10.32
July	6,939.14	764	9.08
August	7,674.65	751	10.32
September	7,365.06	853	8.64
October	10,263.10	883	11.62
November	10,859.31	1,187	9.14
December	14,547.13	1,492	9.75
1903.			
January	17,920.39	1,901	9.42
February	19,861.07	2,255	8.80
March	19,960.62	2,132	9.36
April	13,484.27	1,647	8.19
May	10,582.02	1,352	8.00
June	11,096.33	1,187	9.35
July	8,800.08	1,264	6.97
August	10,880.68	1,247	8.73
September	10,218.06	1,325	7.71
October	12,379.07	1,314	9.42
November	13,010.33	1,347	9.68
December	13,990.35	1,539	9.09
1904.			
January	20,737.49	2,042	10.16
February	22,647.62	2,628	8.62
March	24,630.04	2,586	9.52
April	20,478.04	2,101	9.75
May	15,962.75	1,751	9.11
June	11,809.04	1,485	7.96
July	11,771.34	1,265	9.31

STATE OF ILLINOIS, *County of Cook, ss:*

Joseph J. Schneider, being first duly sworn, upon his oath deposes and says that he is the accountant in charge of the car records of Street's Western Stable Car Line, and has served in that capacity for more than two years continuously last past; that he has compiled the above statement, and that the same is true and correct in every particular.

JOSEPH J. SCHNEIDER.

Subscribed and sworn to before me by said Joseph J. Schneider, this 18th day of January, A. D. 1905.

* KATE L. BLADE, *Notary.*

Mr. REICHMANN. This statement as you see commenced with March, 1902, and it ends in July, 1904. That was as late a date as our records were complete enough to give us the information, and besides, it covers fully the period which the Interstate Commerce Commission refer

to in their report. I will start with March, 1902, when we had 1,301 cars in the eastern territory, and the average earnings per car were \$8.06. There are also shown here the actual amounts paid, and I will say that it appears that for any one month of our total earnings in the eastern territory the maximum is in March, 1904, when it was \$24,630.04 on 2,586 cars. When I speak of cars in this table that means cars that have been on the road a whole month. This statement is based on 30 car days. That is a little technical, perhaps, but I think it is generally understood what that means.

In January, 1904, the number of cars was 2,042 and the average earnings were \$10.16. Then we jumped the next month to 2,628 cars, and our average earnings were only \$8.62. We put in nearly 600 cars there in that month. We may within a week have to put in a thousand additional cars at times.

(Mr. Reichmann here read aloud the entire table above referred to.)

Does not that prove that this arrangement works perfectly automatically? We take them out and put them in as is necessary, and our earnings stay about the same, and the railroads handle the cars in about the same way. How does that compare with the testimony of the gentlemen who testified before the Senate committee, I think, the other day, that the earnings on these cars were as high as \$12 a day? This table is certified to and sworn to before a notary.

Mr. ADAMSON. I looked at the figures as you gave those details, and I would like to know whether it is true that you do not average over \$12 a day.

Mr. REICHMANN. I will answer that our earnings on the cars in other territories are considerably below the earnings in the eastern territory. I will admit that those are the best earnings which we have.

Mr. ADAMSON. That is, in the Atlantic division?

Mr. REICHMANN. Yes; between Chicago and the Atlantic seaboard. It is the best and quickest route that we have, and it is where the cars come right back to our center, and we can shift them to other places. Do you see what that means? It is a well-recognized principle of car distribution that no railroad manager would diminish the equipment on his own line to the extent of threatening his own local service. Take a great railroad like the Pennsylvania Railroad. They have not got to serve the shippers at Chicago only. Think of the vast territory that they must serve.

I desire to correct the report in still another respect. It is not true, as stated by the Commission, that the cars of the private stock-car companies are largely used by the prominent packers. It is safe to say that not 5 per cent of such cars are used by the packers. They are used for shipments purchased in competition with the packers.

Mr. MANN. These packers do not ship live stock, do they?

Mr. REICHMANN. They do; yes, sir. They do ship some live stock when they buy more than their plant will handle, and there is, of course, a certain amount of fresh meat that is consumed, as you know. Some people do not like cold-storage meat, and they do ship more or less live stock. They to-day ship hogs—largely, however, to Boston and New England. That is a matter that I would rather the people in that line of business would handle before the committee, because they will do so more correctly, no doubt, than if I should be permitted to draw on my imagination and talk to you about the packers' business. I want to talk about the things that I have the facts on.

Mr. MANN. Do the packers ship the bulk of the live stock from Chicago east in your cars?

Mr. REICHMANN. I have stated that they do not ship 5 per cent of it in our cars. Some of the packers—for instance, the Swift Company—have their own live-stock cars, and especially the hog cars. They have a good many of them. They would go to a railroad agent and order a car the same as any other shipper, and the railroad company might furnish them our car or one of their own cars. It would depend entirely upon what they had available. Does that answer your question?

Mr. MANN. Yes, sir.

Mr. REICHMANN. I desire to correct the report of the Interstate Commerce Commission in still another respect. It is not true as stated by the Commission that, as a rule, the common stock cars built by railroads cost more than the special stock cars of the private stock car companies. The latter cost more and are preferred by shippers because cattle are better housed in them and the shrinkage and loss is less than in a common car, where cattle can not be fed, watered, and cared for as they can be in the special stock cars. It also costs much more to maintain these special cars with feeding and watering devices than it does a common stock car. When I speak of shippers preferring them, I mean in long-haul traffic. We all know, when we want to travel long distances, that the Pullman car is a good thing. The charges for our cars are confined, however, absolutely to the rental paid us by the railroads, and we get nothing whatever from the shippers. In this connection permit me to refer to the cost of repairing freight cars as reported by some railroads for the year 1904, viz:

	Per car per year.
Atchison, Topeka and Santa Fe Railroad.....	\$93.
Union Pacific Railway Company	70
St. Louis and Southwestern Railway.....	42
Buffalo and Susquehanna Railroad.....	45

Allowing for the extreme variations due to different methods of bookkeeping, Mr. J. W. Midgley, in his "Car Service Reform, 1902," establishes \$45 per car per year as the cost of repairs to freight cars, based on the reports of over thirty railroad companies. The Master Car Builders' Association have established the fact that the depreciation is 6 per cent per annum. Figuring now 5 per cent as the returns on our cars, costing about \$700 each, the account would stand as follows: Repairs for one year, one car, \$45; depreciation, one year, at 6 per cent, \$42; returns on investment per year 5 per cent, \$35; making a total sum of \$122 per car per year that we must earn to realize 5 per cent on our investment; and we have not been able to do it. The special stock cars cost somewhat more to maintain, on account of the feeding and watering devices, than this figure.

Our capitalization is as follows:

Common stock outstanding.....	\$3, 834, 700
Preferred stock outstanding.....	776, 900
First mortgage bonds, January 1, 1905	164, 000
Car lease warrants, January 1, 1905.....	1, 759, 147
Total	6, 534, 747

Our preferred stock has paid 7 per cent, and our common stockholders have during intervals of several years received no dividend;

but for past few years they have received 2 per cent per annum. Our stock is owned by the public generally, and we have between eight and nine thousand cars.

I wanted to make that statement so as to connect the two.

Mr. MANN. Your stock is listed on the stock exchange?

Mr. REICHMANN. Yes, sir; it is.

Mr. MANN. In Chicago?

Mr. REICHMANN. Yes.

Mr. MANN. What is it quoted at?

Mr. REICHMANN. We pay 2 per cent on our common stock and have done so for several years. Some people have pretty good confidence in the present management of the company, and they have been paying as high as \$28 and \$29 for small lots, bought in a small way, or even as high as \$30 and \$31 for the common stock.

Mr. MANN. That is \$100 shares?

Mr. REICHMANN. One hundred dollar shares; yes, sir. Our preferred stock is selling at about par. I might explain further that an important move of our company in April, 1902, was to take over the Hicks and Canda cars, that I referred to in the statement of earnings, from the bondholders, who were left with that property on their hands.

Mr. MANN. You control the Hicks car line now, do you?

Mr. REICHMANN. Yes, sir. We issued these warrants in payment of these cars, which are shown at about \$2,000,000 in the statement.

Mr. ADAMSON. How about those who manage the companies?

Mr. REICHMANN. They have to pay me enough to live, Judge.

Mr. ADAMSON. You seem in pretty good condition.

Mr. REICHMANN. I am in as hard a fix as I was before Judge Hawes in Chicago—you know him, Mr. Mann—once when I asked him for a long extension of time from jury service the judge said: "Why, Mr. Reichmann, you might be dead before that time." I said, "Oh, there is not the slightest danger, your honor." He took a look at me, and had a good laugh.

I desire to apply the above statement more particularly to the business of the company with which I am connected, but which I am thoroughly satisfied is a fair statement of the average conditions prevailing with all of the private stock car lines. In speaking also more particularly for the Street's Western Stable Car Line, I wish to emphasize the fact that our company is chartered under the laws of the State of Illinois for the purpose of building for sale and hire these special stock cars. Our cars are turned over direct to the railroads, are operated by the latter and we collect no revenue from the shipper, nor do we make any addition to the rental we receive from the railroads. We control no traffic, provide no loading for the cars, nor do we route them. Our relation to the railroads is that of an equipment or car-leasing company.

Mr. STEVENS. You do not provide for the feeding of the cattle anywhere?

Mr. REICHMANN. May I just finish here with this statement, and then I will answer that?

Mr. STEVENS. I beg your pardon.

Mr. REICHMANN. Railroads sometimes pay or guarantee us a minimum car rental per month when traffic conditions on certain lines will not warrant us in turning cars over to them on regular mileage.

Now, in regard to the feeding and watering of cattle, I am glad that you asked that question, because I think it has great bearing on this icing charge. I have begged of several of the committees not to pass any new regulations that would compel us to ice our stock cars, because I did not want any such trouble. I do not want the house pulled down on our heads like that. Shippers, so far as the feeding and watering is concerned, recognize that that is not a facility of transportation. They have always recognized that. The same principle exactly is involved in the icing proposition; they buy their hay and make arrangements for their water, if they want any. The Union Stock Yards Company at Chicago, or other stock yards, sell to their shippers at different points hay just as they sell to their men in charge of the cattle lunches, or anything else.

Mr. MANN. Is it not the duty of a railroad company to provide a stock yard wherein the cattle can be fed and watered?

Mr. REICHMANN. The only thing I know about that is that you have a Federal statute, I believe, which requires stock to be unloaded in transit every twenty-eight hours, except when in cars with hayracks and water troughs.

Mr. MANN. Yes.

Mr. ADAMSON. Am I to understand from that statement that you mean to say that you do feed the cattle and water them in transit?

Mr. REICHMANN. I mean to say that we do not. The shipper buys his hay as his men who are with the cattle in the same train buy their lunches.

Mr. ADAMSON. They do not buy them from you?

Mr. REICHMANN. They buy them from anybody.

Mr. ADAMSON. I want to know whether you are engaged in selling it?

Mr. MANN. Do you sell any?

Mr. REICHMANN. Yes, sir; we do, in Chicago, at our car shops. That comes about in this way: We do not make a business of it, and would rather not do it. We do not make anything on it. Take the initial trip of the cars out of our yards. Of course we have a certain number of cars coming in for light and heavy repairs and for rebuilding, but our average car capacity per day, of new and repaired cars turned out, is about 50 cars per day. Now, as the cars leave our own yards, the shipper may want them hayed and bedded before sending them for loading to the stock yards. In that case we put the hay and bedding in the cars. We keep shavings and sand and hay for that purpose, and we make the regular charge against the railroad, who put the charge in the waybill against the traffic.

Mr. ADAMSON. That is for the bedding of the animals?

Mr. REICHMANN. Bedding and haying, and so on.

Mr. ADAMSON. Does that include the feeding?

Mr. REICHMANN. The hay for the feeding.

Mr. ADAMSON. The haying for the feeding?

Mr. REICHMANN. Yes; the hay that they eat.

Mr. ADAMSON. Do you furnish anything else that they eat besides hay?

Mr. REICHMANN. Not unless we get some new statute compelling us to do something. We have to disinfect the cars pretty thoroughly, and we have to do a good deal, so that our returns are being curtailed considerably.

Mr. ADAMSON. Whether the necessity is derived from statute, or custom, or otherwise, I want to know just what you do in transit with these cars as to caring for, feeding, or watering the cattle?

Mr. REICHMANN. I think I see what the judge is getting at, and I want to clear his mind, if I can, before leaving this. The Pennsylvania Railroad may order from us 10 cars for a shipment of cattle to Philadelphia, we will say, for export. That is their purpose.

Mr. ADAMSON. I do not care what form you put it in.

Mr. REICHMANN. We will say that is their purpose. We know nothing about that, only they order the cars from us. They order the cars from us hayed and bedded, and we put the hay and the bedding in the cars and turn them over to the Pennsylvania Railroad, and we charge the Pennsylvania Railroad for that service.

Mr. ADAMSON. Knowing that they charge their patron for it?

Mr. REICHMANN. We do not care anything about that. We never see the bills and have nothing to do with the traffic, and we do not see the shipper, and do not know him, but we know the railroad.

Mr. MANN. Do you water the cattle and give them hay in transit?

Mr. REICHMANN. No, sir.

Mr. MANN. Then that is not in transit?

Mr. REICHMANN. That is admitted, is it?

Mr. MANN. Yes, sir.

Mr. REICHMANN. Then if that is admitted I will answer that we do not feed and hay in transit.

Mr. RYAN. The shipper sends his men along to feed and water the cattle wherever they think it is necessary to do it?

Mr. REICHMANN. Yes, sir. What I want to make clear is that they recognize that the care of stock is something in addition to the transportation. It has been recognized by the shippers of cattle as an additional facility or function, or whatever you have a mind to call it. I am not a lawyer, but I am trying simply to make a clear statement.

Mr. ADAMSON. You are a pretty good witness.

Mr. REICHMANN. A pretty clear statement is what I am trying to make. I have told you that the cars that leave our yards are sometimes hayed and bedded, and they are not hayed and bedded by us after they leave the yard.

Mr. RYAN. By you?

Mr. REICHMANN. By us. I do not know that they are anywhere, so far as that is concerned. Of course the cattle eat this hay.

Mr. MANN. Coming into Chicago the cattle sometimes are fed?

Mr. REICHMANN. That is a western railroad proposition altogether; but, as I say, you know what terrible trouble they have had about this stock question—about sending men in transit with the stock. The railroads, I think, even insisted that their liability did not compel them to pass a man in charge with the stock. I want to make that clear to the committee—that as a practical transportation question the railroads have taken one position, and now certain shippers are taking another.

Mr. ADAMSON. Now, you are competent to make nice arguments and statements, and I want you to come right back and answer my question and one or two others. I just want to know, without any regard to your statutes or your contracts or your customs or anything else, what it is that you usually do. In coming east you say that you place in the car, not outside of Chicago, the hay and bedding for the entire

trip, as you estimate it. Is that right? You intend it to be enough for the entire trip?

Mr. REICHMANN. I will have to answer that question, no. And yet that would hardly be a fair answer.

Mr. ADAMSON. I would just like to know, when you undertake to put hay and bedding in the car——

Mr. REICHMANN. When you tie me down to a strict answer, I would say, no.

Mr. ADAMSON. When you undertake to hay and bed a car, to what extent do you do it?

Mr. REICHMANN. To the extent that we are asked to do so by the railroad.

Mr. ADAMSON. I want to know to what extent that is.

Mr. REICHMANN. You must ask that of the railroads or the shippers.

Mr. ADAMSON. I am asking you. They might be as cautious as you are.

Mr. REICHMANN. I am not cautious. I am simply anxious not to be misunderstood.

Mr. ADAMSON. When you undertake to prepare a car at Chicago, which you say you do exclusively in Chicago, with hay and bedding, I suppose it is the common intent on the part of the railroad which orders it that you should supply sufficient for the entire journey in the car; is not that true?

Mr. REICHMANN. I am just trying to think of something that will answer you clearly. So far as we are concerned, we have not any intention about it.

Mr. ADAMSON. If you charge for it, you ought to intend to give them that which they pay for.

Mr. REICHMANN. We charge for it. They order it of us, just as you would step into a store and order a suit of clothes or a desk or a lunch or anything else.

Mr. ADAMSON. You would understand if I got a suit of clothes I would want it big enough for me, would you not?

Mr. REICHMANN. All right; but as to whether the clothes would be big enough, or whether they would fit you, I would have to measure you.

Mr. ADAMSON. You mean to say that the railroad company in ordering a car hayed and bedded does not give you any idea——

Mr. REICHMANN. I say this, that what they want they tell us absolutely and specifically.

Mr. ADAMSON. That is, you intend to do that thing?

Mr. REICHMANN. But I am not going to commit myself as to what their purpose is in ordering that hay and bedding.

Mr. ADAMSON. Do they say that they want a car hayed and bedded to go to New York, or what do they say?

Mr. REICHMANN. They carry out the instructions of the shipper.

Mr. ADAMSON. When they order a car from you hayed and bedded, in what shape do they put that instruction to you?

Mr. REICHMANN. They say "We want 10 stock cars, and want them bedded." That might be one order.

Mr. ADAMSON. Now, when they want them hayed, what will they say?

Mr. REICHMANN. "We want 10 stock cars, and we want them hayed and bedded."

Mr. ADAMSON. Do they not tell you for what purpose or how far they want them hayed? Do you put as much in one car as in another?

Mr. REICHMANN. I may be at fault in this, that I do not convey the idea clearly enough, but when the car is hayed it is usually with a certain quantity; the usual number of bales of hay.

Mr. ADAMSON. Regardless of the distance it is to go?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. How many bales of hay?

Mr. REICHMANN. I could not answer that specifically. Of course our racks I should not think would hold over 4 or 5 bales of hay. I know that at the Niagara frontier there has been quite a little difficulty at times because the cattle would have destroyed or used up the hay that was in the cars. I think it is true largely of cattle passing through Canada, so that I assume it is their restrictions that make the trouble. They have ordered these men to buy extra hay.

Mr. ADAMSON. Then this is not enough hay to go through on a long journey?

Mr. REICHMANN. I think the shipper's object is to hay the car for a long journey. I might explain further that there are a great many cars that are not hayed and bedded at Chicago.

Mr. ADAMSON. I know; but I am talking about those that you hay and bed. Do you mean to go on record as saying that your company gets an order and fills it to hay and bed and you fill the order without any reference to how far the car is going or what State it is going to?

Mr. REICHMANN. That is true. We supply a uniform amount to each car. The Union Stock Yards' charge is \$3 for that same service, and we all charge alike. That has been the uniform charge for twenty-five years, I think.

Mr. ADAMSON. And they all pursue that practice and supply hay and bedding without any knowledge of where they are to go or how far the cars are to go?

Mr. REICHMANN. Except such knowledge as the shipper may impart.

Mr. ADAMSON. Do you get the knowledge?

Mr. REICHMANN. No, sir; we do not.

Mr. ADAMSON. Do you do it without any knowledge on your part as to how far the car is desired to go, or where it is intended to go?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. And you put a uniform quantity of hay and bedding in there, regardless of the distance or route?

Mr. REICHMANN. Yes, sir.

Mr. ADAMSON. Or the number of cattle to be put in there?

Mr. REICHMANN. Yes, sir. We do not know that it is going to be used for cattle, even. Our assumption is that it is to be used for cattle, but they could use a car for something else.

Mr. RYAN. As a matter of fact, your responsibility ceases when you turn the cars over?

Mr. REICHMANN. Yes, sir. We are car building, and we turn the cars over to the railroads. When they ask for special service, such as this haying, and we can furnish it, we do it; but we carry out their orders absolutely.

Mr. ADAMSON. I am trying to find out whether there is anything you do and agree to do, or any responsibility that you assume as to that car or its contents anywhere in transit through the different States.

Mr. REICHMANN. Can I proceed with my statement, and I will answer that, I think, absolutely?

Mr. ADAMSON. I would like to get it answered directly. You are a good hand to make arguments, but when I ask you a question I would like to get an answer to it.

Mr. REICHMANN. I think I have already covered it.

Mr. ADAMSON. If you are not a lawyer, you missed your calling. You ought to have been.

Mr. REICHMANN. Thank you; thank you very much, Judge. I will get even with you for that.

Mr. ADAMSON. I do not know; if you can think of anything worse to say to me.

Mr. REICHMANN. I am speaking more particularly for the Street Western Car Lines, and I wish to emphasize that our company is chartered under the laws of the State of Illinois for the purpose of building for sale and hire these special stock cars. Our cars are turned over direct to the railroads, are operated by the latter, and we collect no revenue from the shipper, nor do we make any charge to the shipper for the use of the car or for any service in addition to the rental we receive from the railroads. I do not see how I could answer it any nearer than that. We control no traffic, provide no loading for the cars, nor do we route them. Our relation to the railroads is that of an equipment or car-leasing company. Railroads sometimes pay or guarantee us a minimum car rental per month when traffic conditions on certain lines will not warrant us in turning cars over to them on regular mileage.

Mr. ADAMSON. You made that part of your statement before. And I thought that was such a pretty place, if you had just said that you neither fed or watered those cattle nor provided them with anything or accepted any responsibility for them en route. I heard you when you made that part of your statement a moment ago, but I did not hear you say what that was such a pretty place for you to have said.

Mr. REICHMANN. If I am not clear, I mean to be. In some cases, also, shippers requiring cars for special purposes will obtain them from us on a fixed or guaranteed rental, but this is a comparatively small part of our business. In addition to the conditions which I have recited, existing in the large central markets, cattle must frequently be moved from certain sections of the country on very short notice under conditions that can not be foreseen and provided for in advance. Then, too, there are certain movements of such short duration that it does not pay the railroads to supply their own cars. Hence the necessity for maintaining a large free equipment upon which the various railroads can draw just according to their needs. As already stated, if each railroad provided stock cars for its maximum requirements, a large part of them would be idle most of the time, which would add very materially to the total transportation expense.

During very extended periods, also, when general business is good, railroads place a good many of their common stock cars into dead-freight loading, such as lumber, coal, coke, brick, ties, and construction materials, and call on us for cars to protect their live stock. Take so large and well equipped a system as the Santa Fe, for instance, they frequently call on us for from 500 to 1,500 cars during such periods. That is the result, not of a condition in live-stock traffic, but is due to the fact that their dead-freight loading is so heavy that they

have got to put their own stock cars into dead freight more extensively. Last fall when the corn movement was at its height they slatted a lot of their stock cars and put them in this traffic, while we furnished them with what additional cars they required for their stock movement. In this way the railroads all over the country recognize that we are a great help to them.

As conditions vary so extensively in different sections of the country we could not conduct our business on a fixed rate, and this is a matter on which we must have considerable latitude. The necessity for maintaining a large stock-car equipment on which the railroads can draw is, I think, emphasized by the fact that the stock raisers of Texas were instrumental in having a law placed upon the statute books of that State providing penalties against the railroads for failure to supply a stock car within a certain time after the shipper filed a requisition with their agent. Railroad officials in charge of distribution of equipment in this section have stated to the Interstate Commerce Commission at their various hearings on matters pertaining to the live-stock traffic that they would not be able to get along without the private stock-car lines.

And in justice to the Interstate Commerce Commission I wish to say that in some of their subsequent reports—and I regret I can not state the authority—they said, in sizing up all they say about the private stock-car evils, giving you the substance, and not quoting verbatim: "If, as seems to be true, these special cars take care of certain unusual conditions, the private-car evil may not be so much of an evil after all."

Mr. ADAMSON. I do not want to interrupt you or disturb your course, but I think you want to effect the most good you can in your hearing, and you will pardon me if I say that so far as I am concerned I fully recognize that there is great good in these cars and great use for them, and I do not know that you have ever done a thing in the world that I would blame you for and would not do myself, but there are two points that I have been trying to drive at. The first is, do not your private contracts perpetuate the same condition that you say enforces their use; and in the second place, the questions that I have been asking have been directed to finding out whether you do anything which would give us the power and jurisdiction as Congressmen to regulate you under the provision of the Constitution to regulate commerce between the States, and therefore I have been asking you what you aimed to do and did in connection with the property in transit between the States. I have not asked you about those exclusive contracts, but I would like to hear you talk about them before you quit. But I would like to ask you whether or not the necessity which you say exists for these private cars tends to prevent any competition ever arising to destroy that condition?

Mr. REICHMANN. As to the basis of compensation, the private stock car lines receive for the use of their cars in general traffic the established rate of mileage which was in effect for the interchange of similar equipment between railroads prior to the establishment of a per diem rate and penalty as a basis for settling car balances between railroads a few years ago. This system of per diem and penalty was resorted to by the railroads not with a view of fixing a more just or equable rate of compensation to railroad-car owners but for the sole purpose of securing a more prompt return of the railroad car to its owner, as a per diem rate acts in the nature of a penalty upon the operating com-

pany for holding the car out of use when away from home. It is a purely reciprocal arrangement between the railroads and can be safely used as a basis for adjusting balances, for the reason that a railroad owning 10,000 cars, requiring that number for its normal traffic, when it has 3,000 of its own cars away from home, will at the same time have 3,000 foreign cars on its line, which results in a perfect adjustment of its car balances. To establish by legislation the same basis of settlement for private cars as is at present in force for the settlement of railroad cars would absolutely destroy the business of the private stock car companies and would be an act of great injustice.

And, gentleman, to explain that is the main object that I am here for. I do not know whether Congress has the authority to fix our rates, or what it has. Those are legal questions and I am not a lawyer. Sometimes I wish that had been one. Perhaps I could answer your questions better, Mr. Committeeman, if I had been one, but so far I have escaped it.

Mr. ADAMSON. You can escape allowing anybody to handle you now?

Mr. REICHMANN. Certainly such radical legislation should not be attempted until thoroughly reliable data are at hand to enable a competent tribunal to determine what is a fair and reasonable rate of compensation to car owners. As already stated, great latitude must be permitted railroads in securing equipment, and that this should be subject to reasonable control to prevent discrimination may perhaps be true. The question of the direction of this control is, however, not so easily determined.

Mr. Chairman, I want to say this, that however my testimony here may impress any member of this committee, I come here with no other purpose—practically on the invitation of the President in his message—but to discuss with you these important questions, which I am quite sure you are trying to handle in the interests of the great American people. I want to be just as frank with you as I can be. The question of this control, however, is not so easily determined. It will be, I think, conceded that if control is to extend along the line of making car companies subject to the provisions of the interstate-commerce act, then this same control must be extended to other industries, or other facilities which may be provided by industries in the natural development of commerce. How far this would extend it is at present impossible to realize. I am satisfied it would lead to great complications, and at best be of doubtful value in the correction of abuse.

In the case of the private cars, I desire to point out the fact that a private-car company does not operate its cars. The railroad common carrier is always the operating company, regardless of the owner of the car. The traffic is always under the control of the railroad regardless of the car or its owner. Cars can only be used by a railroad company having the power necessary for their transportation.

Now, just to emphasize that, I would like to show how clearly that is brought out in the Pere Marquette exclusive contract, I want to read a clause of that contract:

1. That the car line agrees to furnish to the Pere Marquette at some point or points on the Pere Marquette lines, properly constructed fruit cars lettered "Fruit Grower's Express," "Kansas City Fruit Express," or "Continental Fruit Express," sufficient in number and furnished in such order as to carry with reasonable dispatch the fruit which the Pere Marquette shall be tendered by shippers during the life of this contract, etc.

2. The Pere Marquette agrees and obligates itself to use the car line's equipment, etc.

I wanted to point out that that was a well-recognized principle of transportation.

Private car companies or shippers do not use cars; it is the railway company that uses them for the transportation of commodities tendered them as common carriers. A car company, as such, can not make a contract with shippers for the transportation of commodities, excepting as it may have a contract with the railroad for the transportation of commodities loaded in its cars, when it seems to me its status must be defined as a part of the railroad; and to the extent that such car companies have performed any service connected with the transportation of property, it is only a reasonable conclusion that they were acting as agent or a part of the railway common carrier for whom they were performing the service.

That may not be legal at all, but it looks to me like good, ordinary, common sense.

Mr. ADAMSON. The agent who participates in anything is particeps criminis if there is anything wrong with it.

Mr. REICHMANN. I am thoroughly convinced that all of the different features of the business of what might be termed adjuncts to the transportation business of the country can best be controlled through the railway common carrier filing with the Interstate Commerce Commission or a similar body all contracts that it may have with such companies or semi-industrial railroad organizations. So far as the private car lines are concerned the railroads could, I think, without materially increasing their burdens, furnish statements showing the average number of cars of each company which they had on their line and the rentals paid such companies for the use of the same for such period as might be deemed proper, as well as the rate of mileage paid.

Now, Mr. Chairman, if I have a little more time I would like to go into some of the statements that were made here. I will not assume to read anything prepared. I will assume merely to cover some of the points.

Mr. STEVENS. Cover them as briefly as you can. We would like to have you finish this morning if possible.

Mr. REICHMANN. What I wanted to make plain is that the position has been taken here that the railroads should provide every facility; that they should be forced by legislation to provide every facility. I wanted to point out, if I could, that through the natural operation of the laws of trade, the railroads have been gradually but surely assuming certain added responsibilities. They have undertaken, as was stated the other day, the refrigeration of certain commodities. The Official Classification has for years provided a rate on certain products that included refrigeration. The western classification has not been quite as extensive in some respects, and it has been more so in others. I am not in sympathy, however, with this enforcement, and I believe it wholly impracticable to enforce by legislation that they must provide every facility asked for, no matter what the conditions may be. It may be perfectly practicable for railroad companies to undertake these special facilities in some territory, on certain kinds of traffic under certain circumstances, but it may be utterly impossible for them to do so under other circumstances.

Some of the same gentlemen who have appeared here insisting so earnestly that the railroads be compelled to provide every facility according to their own ideas, made just the same loud protests that

they are making now when the western railroads provided, under the western classification, one rate on dairy products in less than car loads, and another rate in car loads—a lower rate—and asked the shipper to assume the icing expense. Why, I have personally handled any number of claims from Boston with language in them that I dare say made the dome of the old Massachusetts statehouse rattle at the time the letters were written. There was such a determination upon this question that it would be necessary to have the actual documents to give you any conception of it. What are they trying to do here now? That is what they are protesting against now, so far as I am able to learn from evidence before the committee.

Outside of the general charge that Armour & Co. are going to get a monopoly of the food products of this country they are supported by nothing but a fear that they may some time be driven out of business, which shows a most wonderful lack of confidence in American institutions. I repeat that their protests are against the railroads being permitted to make the best arrangement which the commercial situation warrants for the necessary protection and insurance of the highly perishable commodities that can not be successfully handled by the ordinary means of transportation. They would have you believe that because the railroads have undertaken this protection in a small degree, that therefore there should be no limit to their undertakings in this direction.

Because of their lack of knowledge of the railroad business, viewing it as they must from their limited experience as shippers, being unable, however honest they may be, to make an accurate survey and place a true value upon all of the elements of this problem, they erroneously assume that they or rather the producers would escape the expense of this added service if in some way the private car line could be gotten out of the way. In this they would of course be greatly deceived, for, as you will realize, this expense must be paid by some one. I maintain that these charges that have been exacted since the Elkins law became effective can not be compared with the charges prior to that time, for the reason that concessions in icing charges were used as a basis for influencing shipments. This may not be known to members of the Commission Merchants' League, as usually the shippers made their own arrangements with the refrigerator lines. These gentlemen make no distinction between different territories where wholly different conditions prevail. Take, for instance, Minnesota, especially in the vicinity of Duluth, the place of business of the gentleman who has enlightened you upon the question of refrigeration, where nature does the work for him a large part of the year, a community that produces no highly perishable products; in this territory it is quite possible for the railroads to undertake the task, because here nature has limited it to an infinitesimal portion.

Here the wheat and staple products can be held and are held, awaiting sufficient equipment to move them without great loss or hardship.

But, nevertheless, the railroads of Minnesota and the Northwest have had to frequently resort to the special stock cars, and notwithstanding the stability of that traffic in that section and the railroads being reasonably well supplied with cars they could not always move the cattle out promptly without help from the private stock car lines, and these conditions have prevailed for a great many years.

I want briefly to call attention to another matter. Let me call your attention first to the fact that the railroads in such territory—that is, in the territory producing highly perishable commodities—do not always have the staple commodities to move over their rails, as a guarantee of revenue, that some of these northwestern and western roads have. They must rely upon these fruits, berries, and so forth for the revenue to maintain their railroads. They must not only provide the best possible facilities but they must do so at a minimum of expense, for, as is well known, there is greater uncertainty as to crops of this nature than as to wheat, corn, and cattle.

Is it not natural then that such roads should make the necessary arrangement for cars with companies that can give shippers the added assurance of the safe transportation of their commodities?

When I was managing the refrigerator car lines operating over the Grank Trunk system, we tried to handle the peaches in connection with the dairy-traffic service, but we could not do it satisfactorily; we could not spare cars from the dairy traffic. I think the Michigan Central was in the same predicament. Sometimes when the peach traffic looked most promising and we put our cars into Michigan for peaches we would try to obtain cars for the dairy traffic from the western roads originating it, but we found we could not hold the business that way and often lost both peaches and dairy freight. The scheme which has been proposed, for the originating line to obtain cars from connections that can share in the haul, has not only been tried, but has been in actual use all through my railroad experience. It works all right for commodities that can be held awaiting cars and where the destination of the traffic is known. But the highly perishable freight and live stock can not be handled in that way. Cars must be at the originating points for prospective loading to any markets, and for this purpose a car is needed that can travel over any connection. Take the grape business, for instance. The grapes are actually loaded in cars before they are sold or their destination is known. The same is true, in a measure, of potatoes and other commodities.

I am trying to avoid being technical, and will not discuss the question of the equalization of the loaded and empty haul, which is involved here and which is the true reason why loading roads sometimes insist on routing cars to connections.

It will be readily appreciated that railroads will not diminish their equipment by supplying it to their connections, to the extent of crippling their local service. Their first object is to protect business on their own line, and, second, to cooperate with their connections on reasonable assurance that substantial traffic results will follow. They will not send cars to connections on an uncertainty for purely prospective business.

To meet just such conditions the private cars are largely used, and, as will be seen, it would be a great hardship to compel the originating roads to pay penalties in the shape of per diem charges for the time these cars are held for loading, while on a mileage basis all roads interested in the traffic share the expense of car service alike.

The question of interchanging identical cars is eliminated by the handling of the special traffic in private cars, since car balances between carriers can be adjusted on the basis of the total number of cars handled and identical cars need not be returned to connections.

I must apologize for taking so much time, Mr. Chairman.

Mr. STEVENS. Have you concluded your statement?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Who repairs your cars? For example, you send out those ten cars to the Pennsylvania road. What arrangements have you for getting them back and repairing them?

Mr. REICHMANN. We have our own car shops at Chicago, at Kansas City, at St. Louis, and at Fort Worth, Tex.

Mr. STEVENS. Then you repair your own cars, do you?

Mr. REICHMANN. Yes; we do not repair them exclusively. Cars that are deemed by railroads to be in such a worn-out condition that they are not safe for traffic are sent to these special plants of ours. All ordinary repairs and running repairs to cars fit for service, and which may yet have flat wheels, or worn-out brasses, or on which the air hose may be burst, are repaired under the rules of the Master Car Builders' Association, which is an organization to which all railroads and all private-car lines, practically belong, for the purpose of creating uniformity in regard to this matter of repairs. They send us the bills for repairs, for which the owing company is responsible. Breakage, or what is known as "unfair usage," are assumed by the railroads. They repair these breaks at their own expense.

Mr. STEVENS. You repair the ordinary wear and tear, and they the extraordinary wear and tear?

Mr. REICHMANN. Cars requiring general overhauling, which are in a worn-out condition, we get in our shops; but ordinary running repairs are made right on the railroads by their own force of men.

Mr. STEVENS. And you pay for it?

Mr. REICHMANN. Yes, sir. They send us bills once a month, and we pay them.

Mr. STEVENS. But if something is extraordinary, on account of an accident or from some other extraordinary cause, they repair it at their own expense?

Mr. REICHMANN. We necessarily would not know anything about it. The car is to be repaired, and kept in good condition.

Mr. STEVENS. By them?

Mr. REICHMANN. No, sir. I want to get the whole statement in about that. Sometimes they may not have the special parts required for repairs to cars, and they use what is known as a defect card, which is an authority to the owner to repair the car and bill the railroad for it, so that the thing works both ways.

Mr. STEVENS. What I want to get is the language of the general contract for repairing, and about what you are expected to do. Under that statement you are expected to furnish them a car in good ordinary serviceable condition.

Mr. REICHMANN. We must furnish the cars subject to railroad inspection.

Mr. STEVENS. Yes; and you must maintain the car in that condition.

Mr. REICHMANN. Only so far as the natural wear and tear of the car is concerned.

Mr. STEVENS. Certainly.

Mr. REICHMANN. Yes.

Mr. STEVENS. And that you are responsible for?

Mr. REICHMANN. That we are responsible for.

Mr. STEVENS. But anything above that they are responsible for?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. That is what we wanted to get at. Have you exclusive contracts with any railroad companies for taking your cars?

Mr. REICHMANN. We have none whatever, sir.

Mr. STEVENS. You furnish cars as they are called for?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Wherever your storage points are?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Where are your principal storage points?

Mr. REICHMANN. At Chicago, St. Louis, Kansas City, and at Fort Worth, Tex.

Mr. STEVENS. You can answer it "yes" or "no." You have no business with shippers, and no dealings at all?

Mr. REICHMANN. As shippers, no.

Mr. STEVENS. You do not solicit the use of your cars by shippers?

Mr. REICHMANN. No, sir.

Mr. STEVENS. You do not offer any inducements for shippers to ask for your cars from the railways?

Mr. REICHMANN. None whatever, sir.

Mr. STEVENS. You have your entire business with the railways?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Then the charge that has been made at times that you offered inducements to shippers to ask for your cars on their lines is false?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. Are your cars used for any other purposes than hauling the live cattle?

Mr. REICHMANN. The cars when turned over to the railroads are in exactly the same position as a railroad car, and are used by the railroad according to its traffic requirements.

Mr. ADAMSON. Before he leaves that question of exclusive contracts I would like to make it a little plainer.

Mr. STEVENS. Certainly.

Mr. ADAMSON. You say that you have no exclusive contracts. Do you mean to say that no railroad makes a contract with you to use your cars alone?

Mr. REICHMANN. That is what I mean. No railroad makes a contract to use our cars exclusively for any special purpose, or any purpose whatever.

Mr. STEVENS. If a large cattle shipper and cattle owner from Texas or Oklahoma came to you, would you have any way of doing any business with him at all if he wanted your equipment?

Mr. REICHMANN. I stated in my general statement, and I thought I made it clear there, that we sometimes leased cars to shippers for special purposes.

Mr. STEVENS. And let them make their own arrangements with the railroads?

Mr. REICHMANN. Let me illustrate that. I have a case in mind that will fit it exactly. Two years ago, just about two years ago now, the furnace men and the pig iron men who were under contracts for heavy deliveries of pig iron before July 1 could not get the cars at the coke ovens to move the necessary coke, and some of the shippers came to us and leased our cars from us on a monthly rental. They paid us \$18 a car a month for that service on account of certain changes necessary in the cars and the additional repairs to cars in such service that we

must make. We credited them, against this \$18, with the mileage that the cars earned on the railroads. It was their equipment, assigned to their special business by the railroads, and they paid a bonus to us because the cars did not earn any mileage above \$7 or \$8 a month, and since we charged them \$18 they had to pay us a bonus. And, Mr. Chairman, we want to be left in position to make similar arrangements.

Mr. STEVENS. So that you can rent your cars for miscellaneous purposes whenever you have an opportunity?

Mr. REICHMANN. Yes, sir.

Mr. STEVENS. To anybody who comes along?

Mr. REICHMANN. We want to serve the public and the railways on reasonable terms, as a matter of contract between us and them. That is the position that we want to be left in.

Mr. RYAN. The shipper who would come to you and endeavor to obtain the use of your cars would have no advantage over any other shipper, would he, in any contract that he might make with the railroad?

Mr. REICHMANN. He would not; and I am certain that a great many of these shippers of commodities would get their own cars to operate in connection with their manufacturing proposition, though the cars themselves did not earn sufficient to maintain them. That is true in some cases only—a very limited number of cases.

Mr. STEVENS. The hour of adjournment has arrived.

Thereupon the subcommittee adjourned until Wednesday, February 8, 1905, at 10 o'clock a. m.

WASHINGTON, D. C., *February 8, 1905.*

The subcommittee met at 10 o'clock a. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. J. H. HALE.

The CHAIRMAN. Will you please give your name and your residence.

Mr. HALE. J. H. Hale, of Connecticut. I am the most extensive peach grower in Connecticut. In Georgia I have something over 2,000 acres of orchard.

Mr. STEVENS. Located where?

Mr. HALE. At Fort Valley, Houston County, the central peach-growing region of Georgia. I know that I grow and ship more peaches than any other individual peach grower in America.

Mr. STEVENS. What is your capacity in average seasons?

Mr. HALE. In average seasons, one with another, in the neighborhood of 300 carloads, in Connecticut and in Georgia, shipped over the New York, New Haven and Hartford Railroad in Connecticut and over the Central Railroad of Georgia. Neither of these lines own or have any refrigerator cars. The service in Connecticut requires only a moderate number of refrigerator cars; it being midway between New York and Boston, we use the ordinary ventilated cars. But we are at times called upon to ship to greater distances, and have either to get ourselves, or have the railroads pick up for us, such refrigerator cars as we can get. We ice them ourselves.

Mr. STEVENS. In what way; before they start?

Mr. HALE. Before they start; and the railroad agent puts on the bill of lading, in addition, instructions to re-ice those cars at certain other points that may be named.

Mr. STEVENS. You indicate that yourself?

Mr. HALE. In a general way; or the railroad also puts on "Re-ice when necessary;" and we find under a good many conditions that they seem never to find it necessary, and many of the cars so shipped have gone to their destination without any re-icing and in a more or less damaged condition. In Georgia, where it is absolutely essential that all the fruit be refrigerated, as the markets, 90 per cent of them, are north of Mason and Dixon's line, in Georgia, where we have at the present time, in the whole State of Georgia, practically 18,000,000 acres of trees in fruit, all of the fruit must be refrigerated, or 90 per cent of it. The first great crop was in 1889 and my orchards were not in bearing condition, and I know but very little of the conditions of refrigeration; but the next great crop of any account was in 1895, and there was another in 1896, and the railroad companies—the Southern Railway also reaches Fort Valley—the Central and the Southern railway companies brought in a various lot of refrigerator cars, mostly the Armour cars, of the Armour line, and the American Transit Company's line, and the California Fruit Transit Company's cars. The agents of each of these companies pushed the growers pretty hard for business, soliciting business.

Mr. STEVENS. What inducements did they offer?

Mr. HALE. The inducements of special service, and then one fellow would have a better car than another; and such inducements as men in competition will ordinarily present.

Mr. STEVENS. Various rates, I suppose—different rates?

Mr. HALE. If I remember, and I think that I am correct, two of the lines had the same rate, and the other was a little lower. I am not absolutely positive of that.

Mr. STEVENS. Did that include the special service of the car line, or was it the total cost to the final destination?

Mr. HALE. For the service of the car, the icing of the car.

Mr. STEVENS. To what market?

Mr. HALE. That would differ, depending on the various markets.

Mr. STEVENS. To New York, for instance?

Mr. HALE. I can not speak positively of that year. I will tell you of other years. Some of the growers made written contracts with the companies to give them all their business. Others took their chances, from day to day, as to where they would get a car. I made a contract with two of the lines and agreed that I would give them 25 per cent of my business, and I contracted with the Armour Car Company for 50 per cent, but I had no set agreement.

Mr. STEVENS. How did that work? Did you get the facilities that you needed?

Mr. HALE. We got the facilities. But the point I wanted to get at was that there being three of those companies there, none of them could be assured of any regular business from day to day. It was very uncertain. Sometimes one company would get 6 or 8 cars out, and then again another would get 6 or 8 cars out, and the other would not get more than 1; and they were uncertain about their ice supply. Macon was the nearest point, and Savannah was 200 miles, and I think they brought some from Atlanta. At one time there was a shortage of ice. One company would have ice and the others would not. And then the company with the ice would get all the business for a day or two. There came a time once when there was no ice in sight for a day

for any of them, and Mr. Armour's agent came to me and asked me what sort of a scrape or lawsuit there would be if they did not fulfill their contract with me. I said I had never been in a lawsuit and I should simply have to stand the loss, and I would know better next time. But within forty-eight hours they had a train load of ice down there and were able to take care of the business, and were able to load or sell some ice to their rival companies, so that we were all helped out and everything was all right.

We found that year that the various car lines evidently did not have facilities for reicing at all points, and a good many cars came into the markets illy iced, or having evidences of having recently been reiced, and having been out some time, or something or other, and they were not in good condition.

Mr. MANN. Could you state what the average crop a day was there then, of perishable crops?

Mr. HALE. No, sir; the figures have gone from my mind. My own crop at that time was from 3 to 5 carloads daily, and peaches were then worth about \$1,000 a car in the market.

Mr. STEVENS. In the market?

Mr. HALE. Yes, sir.

Mr. MANN. Down there what were they worth?

Mr. HALE. There was not any price there. There were no buyers there.

Mr. STEVENS. You consigned them?

Mr. HALE. To our agents—various commission men.

Mr. STEVENS. If there was no price there, of course there would have been no damage to anyone if they had been all destroyed?

Mr. HALE. That would be a question.

Mr. MANN. Not if they were not worth anything.

Mr. HALE. There were no buyers there at that time.

Mr. STEVENS. What has been the course of business since?

Mr. HALE. In 1898, there having been various dissatisfactions among growers, the Central Railroad of Georgia, after consultation with some of the largest shippers, perfected an exclusive contract with the Armour Car Lines for placing their cars there. I think that I am correct in saying that that was in 1898. I am quite sure that it was. Under that contract—I think the contract was made some time in the fall of 1897 or the winter of 1898, but I am not positive about that—soon after that contract was made the Armour Car Line people erected our shipping station, a large storage ice house, and at Marshallville, the largest peach growing station, 9 miles below, they erected another one, and some time before the crop season they stored large quantities of ice there in anticipation of the business. I think the rate at that time was the same as the rate that we had paid the Armour Car Company and the A. R. T. Company in previous years, \$80 to the New York market and the Philadelphia market, for refrigeration, and \$90 to Boston and New England points, which are the points that I ship to mostly.

Mr. STEVENS. That is for refrigeration, without transportation?

Mr. HALE. For refrigeration. Under that contract the company had an abundance of ice on hand at all times and they had an abundant number of cars there. Those cars were iced up every day—that is, a day ahead of their use—and on call by the railroad company we could get cars that were iced and cool at all times for loading. The Armour

Car Company furnished the men to load those cars--that is, they have to be stripped so that each crate in the cars is properly spaced, with an air space around it, and each has to be loaded and nailed down. They furnished these men for loading these cars, but I have a siding into the middle of my orchard from the packing house, and after those were loaded, once or twice a day, the railroad would send an engine down there and haul them into the icing station of the car line and they were reiced; because putting hot fruit into the cars, it melted the ice and they required to be reiced before leaving the station. Our fast fruit train leaves at 6 o'clock every night, and the last haul out of my orchard is made at 4.40 p. m., which leaves an hour and twenty minutes to haul into the station and have the cars reiced. The cars are reiced and leave over the Central Georgia road for Atlanta, and at Atlanta they are reiced at midnight or thereabouts, or between 1 and 2 o'clock in the morning, and they are reiced again at Charlotte, N. C., and then again the next night at Alexandria, Va. That is all when they go to the New York market. When they are consigned to New England points they are reiced again at Jersey City, and my agents at the other end of the line are pretty careful and look after the cars, and we find that they come to the markets with plenty of ice, with the bunkers practically full.

Mr. STEVENS. How much ice is needed at each icing?

Mr. HALE. I do not know. One year, and it must have been 1898, that first year, I made the claim to the refrigerator-car people that as I was producing and packing more fruit than anyone there, and I had a packing shed immediately adjoining the cars and we loaded a car in one or two hours, while the small shippers often held a car for two or three days, and were opening and closing the doors far more than was the case with our cars, and were of course melting the ice more rapidly than in my cars, that I thought that I ought not to pay for their melting ice, and I made a contract for that year that I would pay \$10 a car and pay for the actual ice used, and I had the bills rendered at the end of the season for the ice used at the different stations.

Mr. STEVENS. Did that make your price lower?

Mr. HALE. I hoped it would make it considerably lower. In some instances it was \$20 lower, and in some instances it was actually higher. I saved that amount of ice. I think that it was a fair deal both to myself and the company, because I paid for the ice that was actually used.

Mr. STEVENS. Did you continue that after that time?

Mr. HALE. No, sir. I paid after that the same as the rest did, although I think they make more profit out of me than out of the smaller growers. The following year the rates were lowered to a crate basis. The minimum required by the railroads is 22,500 pounds in the larger sort of cars, and the refrigeration rate was based on a base price of 12½ cents for crates of 40 pounds. The exclusive contract was in force and has been in force. There is always an abundance of cars there, and there is always a full supply of ice, and the car people keep expert men there, who from day to day travel around the orchards and keep close watch on the crops, so as to be sure and not run out of cars and be sure to anticipate the wants from day to day, and in that way there is a surety of the cars.

Mr. STEVENS. Do you get the style of cars you desire?

Mr. HALE. We get as good as there is, and we get as good service as there is at the present time. I am frank to say to you that there is

not a refrigerator car that I have seen yet that will handle the Georgia peaches in sound condition to market loaded as high as the present minimum the railroads and the car lines require; and that is a grievance that I have. I have talked to the railroads and the car lines about it.

To get up to a minimum of 22,500 pounds it requires us to load a car five tiers high with crates holding 40 pounds each, and if we load to the top tier and pay for the refrigeration we do not fully get it. The bottom tier may be perfectly sound; of the next tier there may be 1 per cent in bad condition, of the third tier, say 3 per cent, and 5 to 7 per cent of the fourth tier, while of the top tier there will be 15 to 25 per cent. And that depends upon the condition of the crop. It is a humid climate down there, and the fruit is somewhat tender and requires careful handling in fact, and if we load as required by the railroads, under the average conditions of the crop we are bound to lose a certain per cent of the fruit. To avoid that I have taken out that many tiers and have only allowed four tiers high. Of course that adds materially to my freight rate. The present rate is 85 cents per 100 pounds, and 12½ cents a crate to New York.

Mr. MANN. What does that make?

Mr. HALE. Two hundred and seventy-two dollars to lay down a carload in New York.

Mr. MANN. Is that the freight or the refrigeration?

Mr. HALE. That is freight and refrigeration.

Mr. MANN. Give us an idea how it is divided.

Mr. HALE. The freight is 85 cents a hundred, and it is 25 cents a crate. It is 36 cents a crate railroad freight, and 12½ cents for the refrigeration, but by reducing to four tiers high, it costs me 45 cents a crate, and 15 cents a crate for refrigeration, or a total of \$1.50 a hundred pounds to deliver to New York City, while the rate is supposed to be 85 cents. The average actual cost is \$1.50 a hundred pounds to get the fruit there in safety.

Mr. MANN. What does that amount to per carload for freight and refrigeration?

Mr. HALE. Two hundred and seventy-two dollars.

Mr. MANN. How much for freight and how much for refrigeration?

Mr. HALE. I have not separated it. I believe it is \$70 for the refrigeration, and the balance is railroad freight.

Mr. STEVENS. The contract is not an entire contract, including both refrigeration and freight. That is, you do not make one contract covering all those items?

Mr. HALE. The railroads issue us a bill of lading, so much a pound, and so many pounds, and then they put the rest for refrigeration.

Mr. STEVENS. Then you make your contract with the railroad?

Mr. HALE. Yes, sir; with the railroad.

Mr. STEVENS. And then you do not look to the Armour people for any damages that may accrue from the nonfulfillment of the contract; you look to the railroads for the whole business?

Mr. HALE. I saw the contract before it was made with the Armour people. I have forgotten the items. I believe they agreed to stand by the railroads in any losses they might have. Yes; we do look directly to the Armour people. We have shipped thousands of cars by them, and they have handled them so well that we have had practically no trouble. In one case I believe I would have had a claim for damages done to the fruit on the upper tiers had I seen fit to press it.

Mr. STEVENS. Please make it clear what contract you make with the railroads and what with the Armour people.

Mr. HALE. No contract with the Armour people at all.

Mr. STEVENS. So that your exclusive contract is with the railroad?

Mr. HALE. Yes, sir.

Mr. STEVENS. So that whatever claim for damages you make must be against the railroad?

Mr. HALE. The only claim that I had I made direct to the Armour people and they settled it. I think under their agreement with the railroads they agree to stand by the railroads. The legal way would be to go to the railroad.

Mr. STEVENS. That is what we wanted to get at.

Mr. HALE. I made the direct claim to the Armour people and they settled it. The year's crop in Georgia last year aggregated nearly 5,000 carloads, all ripening in about five weeks. At the end of that season there is practically no need of the refrigerator-car service in that territory or the territory of the Central of Georgia Railroad.

Mr. MANN. What stations are those peaches shipped from?

Mr. HALE. It is impossible to state. The large stations of Fort Valley and Marshallville shipped a great number of carloads; Marshallville about 500 carloads, and Fort Valley something over 800 carloads. The balance are shipped from smaller stations all over the road. There are really two peach sections in Georgia, the southern one south of Macon and the other of which Rome might be considered the center.

Mr. MANN. Is the refrigeration charge since the Armour people had the exclusive contract more or less than the charge was before the exclusive contract with them?

Mr. HALE. It is less. They reduced it some years ago. It is a less rate and also a better service.

Mr. MANN. Is the supply of cars more readily available now?

Mr. HALE. Yes, sir.

Mr. MANN. Or is it less so than before?

Mr. HALE. Yes, sir; it is far more available—that is, the supply of iced cars.

Mr. MANN. That is, refrigerator cars?

Mr. HALE. In the scramble of these half dozen companies for the business they piled in the cars, but they did not have any ice to put in them, so they might just as well have been box cars.

Mr. MANN. Without these refrigerator car companies at all, would not the railroad companies be able to furnish you refrigerator cars of their own?

Mr. HALE. The Central Road of Georgia, so far as I know, has no refrigerator cars whatever, as I have stated before. And the question that worries me in this matter that is before you now is that if the private car lines are driven out of business I can not myself, as a grower and business man, quite see how the crop is going to be handled as well as it is now. Of course the bulk of my fruit comes out of Georgia over the Southern road and the Pennsylvania, going to the Atlantic coast markets, but there are times when the markets change and we want to divert cars and send them to Minneapolis or Chicago or St. Paul or wherever there may seem to be a good market. We then divert them, and we often get them half way up there and that market tumbles and we divert the car again. And we feel at all times,

on whatever road that car is—of the leading roads—that the Armour people are able to take care of it and to ice it surely and promptly. We feel that we pay a good big price for the service, but we do feel that we get an excellent service.

Mr. MANN. Is it your judgment—if you have a judgment on the subject that you are willing to express—that the Central Road of Georgia would be willing or not willing to supply its own cars in sufficient numbers to handle this crop that has to be moved within the course of five weeks?

Mr. HALE. Last year's crop was between 4,000 and 5,000 cars. I may not be absolutely correct about that, but that is very close to it. We have the prospect now of the next crop being 8,000 cars. I do not see how the Central Road of Georgia could own that number of cars and practically have them lie idle—unless they could rent them out, because so far as their own business is concerned they would have to lie idle—for 46 weeks of the year, when they would have very little use for those cars, and I doubt whether it would not make that a more expensive service.

Mr. MANN. Why do you not ship more fruit to Chicago instead of shipping it practically all to New York and Boston?

Mr. HALE. To answer that personally I aim to grow chiefly the grade of peaches that Chicago is not quite toned up to pay for. They are not willing to pay the price for first-class goods. That is really true. Minneapolis and St. Paul and Milwaukee pay considerably more than Chicago.

Mr. MANN. Do they grow better peaches than they do in Michigan?

Mr. HALE. Certainly, certainly, sir.

Mr. MANN. Do you think Michigan people would agree to that?

Mr. HALE. A majority of them would, I think.

Mr. MANN. I have been a peach grower myself in the South, and I would not agree to it.

Mr. HALE. You left the business for a poorer job.

Mr. MANN. I will admit that. Having eaten good peaches from Michigan, I do not agree that Georgia peaches are better. Has not the freight rate something to do with it?

Mr. HALE. With the quality?

Mr. MANN. No; with the fact that you do not ship to Chicago from there?

Mr. HALE. No; because the freight rate has always been lower from Chicago.

Mr. STEVENS. Where from?

Mr. HALE. Fort Valley, Ga.

Mr. STEVENS. Than to New York?

Mr. HALE. Yes, sir; always.

Mr. RYAN. You referred a few moments ago to a claim made directly to the Armour people. What was the nature of that claim?

Mr. HALE. The nature of it was that when some peaches arrived at their destination they were found to be decayed, and an examination was made and the car was a regular sweat box. There were four thicknesses of heavy paper inside it and the bunkers were full of ice. Evidently the car had been used in winter as a warm-storage car, and it had passed all sorts of inspections and they had failed to pull off the paper.

Mr. STEVENS. Speaking of that exclusive contract, you are not a party to any contract?

Mr. HALE. None whatsoever. The contract is made by the Central Railroad of Georgia. I have no more to do with it than anyone else, except that President Eagan, of the road, before he made the contract system, came to myself and a number of other growers and asked if there was anything unfair in it to our interests or if we had anything we would suggest.

Mr. MANN. Are you interested in any of these private car lines?

Mr. HALE. No, sir.

Mr. MANN. Have you any interest at all in this matter except as a shipper?

Mr. HALE. No, only as a grower of peaches. I am a farmer and haven't any other interest on earth. I was born on a farm and began work working twelve and a half hours a day, and I hadn't a dollar except what I dug out of the soil.

There is one point I would like to refer to which is not in line with the private car-line question, and that is, that with the increased production of peaches in Georgia the selling price is going down, down, and we have got to a point now—we reached it last year—where more than 2,000 carloads of peaches shipped out of Georgia, as they were last year, do not pay the growers a dollar profit. To get them in market in sound condition, loading as required, costs, railroad freight, a total of 60 cents. It costs 30 cents a crate to grow peaches. I figured it out from the expenses of ten years and it costs us 35 cents. It used to cost 28 cents, and then 30 cents, and now it costs 35 cents, with the increased price of labor in the South, to take the peaches from the trees to the packing house and crate them and get them to the car door, 65 cents a crate is what it costs the Georgia grower, or at least that is what it costs me, and the 60 cents freight makes \$1.25. The average selling price last year was about \$1.35, leaving the growers 10 cents a crate. In north Georgia about \$1—

Mr. STEVENS. That 60 cents freight was the freight to the New York market?

Mr. HALE. Yes, sir.

Mr. STEVENS. Then that is not fair, to compare the price of peaches in Georgia with the price in New York.

Mr. HALE. I said the selling price in the markets; the selling price in the markets averages \$1.35.

Mr. STEVENS. In the New York market?

Mr. HALE. In the New York market; yes.

Mr. STEVENS. Oh, that is all right then.

Mr. HALE. I think that is all. I thank you for the opportunity, and if there are any further questions I would be glad to answer them at any time.

Mr. STEVENS. We will now hear from Mr. Pancake.

STATEMENT OF MR. I. H. C. PANCAKE, REPRESENTING THE ALLEGHANY ORCHARD COMPANY.

Mr. PANCAKE. Mr. Chairman and gentleman, speechmaking is not one of my accomplishments, and I feel a little small after hearing Mr. Hale, who says, I think, that he is the largest grower in the world, or possibly he has narrowed it down to the United States. It makes me feel a little small, I say, to follow him, as I am a small grower, but I have been in the business for about seven years. I have been handling refrigerator cars, using that kind of car, for seven years.

Mr. STEVENS. Where?

Mr. PANCAKE. In West Virginia, with our central office located at Cumberland, Md.

Now, if you will ask any questions I will be glad to answer them, or do you prefer that I should make a short statement?

Mr. STEVENS. What is your average capacity for product?

Mr. PANCAKE. Well, without our books that would be quite hard to tell. I have not any stereotyped memorandum of that kind, but it is approximately about 200 cars per annum, with the possibility of its growing to 500 cars in the next few years.

Mr. STEVENS. How long has your orchard been bearing?

Mr. PANCAKE. Since 1893.

Mr. STEVENS. What was your method of getting the peaches to market in the earlier years?

Mr. PANCAKE. The first crop was small. In 1893 we handled the crop entirely by express. Then in 1894 and 1895 the crop was killed. In 1896 we used refrigerator cars.

Mr. STEVENS. Where is your market?

Mr. PANCAKE. Principally in New York City. I presume three-quarters of all the peaches grown have been marketed in New York.

Mr. STEVENS. Over what railroad?

Mr. PANCAKE. Possibly some of those cars were routed from a point, say, 100 miles east of Cumberland over the Pennsylvania Railroad, but ordinarily the great bulk of them have gone directly over the Baltimore and Ohio Railroad.

Mr. STEVENS. To New York?

Mr. PANCAKE. Yes, sir. Of course we ship to Washington, Baltimore, Philadelphia, and sometimes to Boston.

Mr. STEVENS. When did you begin first to use refrigerator cars?

Mr. PANCAKE. I think it was in 1897.

Mr. STEVENS. What cars did you use?

Mr. PANCAKE. I think the first year—that is 1897—we used a few C. F. T. cars, and I think we used some Armour cars under Mr. Loud. I think we used both the C. F. T. cars and Armour cars in 1897, but not very many of either.

Mr. STEVENS. Whom did you make the contract for the cars with?

Mr. PANCAKE. For the refrigerator cars?

Mr. STEVENS. Yes.

Mr. PANCAKE. We made the contract direct with the Armour people and the C. F. T. people through their agents.

Mr. STEVENS. What did they agree to do—what kind of a contract was it?

Mr. PANCAKE. The first year we had no idea as to how many cars we would need, and they simply agreed to provide what we needed at a stipulated price. Of course that had nothing to do with the railroad freight—

Mr. STEVENS. For a stipulated price they furnished you the service from your orchard to your market?

Mr. PANCAKE. Yes; including icing and everything.

Mr. STEVENS. Everything?

Mr. PANCAKE. Every charge except freight.

Mr. STEVENS. That is what I understand; the freight is extra.

Mr. PANCAKE. Yes, sir; the freight was independent of that.

Mr. RYAN. A separate bill for that?

Mr. PANCAKE. A separate bill; yes.

Mr. STEVENS. And how long did that system continue?

Mr. PANCAKE. That is the system in force to-day.

Mr. STEVENS. It is the system you use to-day, is it?

Mr. PANCAKE. I think so.

Mr. STEVENS. Then it makes no difference to you how many times they are iced in going to market, you make the contract with the company and depend on getting them to market in good condition?

Mr. PANCAKE. Yes; there is no extra charge whatever. Of course there is a stipulated price to each market; so much to New York, so much to Philadelphia, so much to Boston, Buffalo, or Cincinnati, or wherever the peaches go. Each place carries a different charge as a rule.

Mr. STEVENS. Have you any choice of refrigerator lines; that is to say, do several lines compete for your business?

Mr. PANCAKE. Yes; I think there have been a number. I think every year there are representatives from different lines soliciting our business, but we decidedly prefer the Armour cars. We tried the C. F. T., and we have tried the old Provision Dealers' Dispatch, and we have tried the Baltimore and Ohio cars. Probably all those combined, however, have not carried one-tenth of the peaches we have shipped in the Armour refrigerator cars. I think the Armour people have carried nine-tenths of our peaches.

Mr. RYAN. The Armour people have no exclusive contract on that line?

Mr. PANCAKE. With the railroad people?

Mr. RYAN. Yes.

Mr. PANCAKE. Not that I know of. It does not interfere.

Mr. RYAN. Other lines of private cars run over those lines?

Mr. PANCAKE. Frequently. Almost every year, with the exception of last year, if we had a point that was not very remote we used a Baltimore and Ohio car, simply because they could carry 40 or 50 miles without its proving very detrimental to the peaches.

Mr. RYAN. I refer to refrigerator cars.

Mr. PANCAKE. They are refrigerator cars, those Baltimore and Ohio cars; or at least they call them refrigerator cars.

Mr. STEVENS. Are they as good a car as the Armour car?

Mr. PANCAKE. Not one-half as good. We would use them if they were, because they are free.

Mr. STEVENS. Are the other refrigerator lines as good as the Armour lines?

Mr. PANCAKE. We do not think so. We have tried the C. F. T. and the Provision Dealers' Dispatch and we do not think any of them compare with the Armour cars.

Mr. STEVENS. In what does the Armour car excel; is it the kind and style of car or does the Armour company excel in the service rendered?

Mr. PANCAKE. In the first place, they establish an office at our shipping point. They keep a man at our elbow morning and night, if necessary, and we do not have one-quarter the trouble with them. They seem to have more influence with the railroad people than we have and we do not have any trouble in getting our cars promptly to market. In the second place, their cars are better insulated, or at least we think they are, and our peaches are delivered in better condition. If they charged 25 per cent more, still we would prefer to use them.

Mr. RYAN. What is the difference now between the charges for the Armour cars and the other lines?

Mr. PANCAKE. We discarded the old C. F. T. cars several years ago. At that time they were a little lower, probably, at the latter part of the season than the Armour cars; but we did not like them even with the lower price.

Mr. STEVENS. Do you know whether you have the same rates for the same service on the Armour line as other peach shippers?

Mr. PANCAKE. No; I do not know that.

Mr. STEVENS. You have not inquired into that?

Mr. PANCAKE. No, sir; I do know this, that we, being much the largest shippers in our community—last season there were only a few applications by others, some few applications for a carload or two, and I think they charged those people probably a small percentage more, very small, simply because it required more expense to get out to their place and so on.

Mr. STEVENS. So that they calculate on the cost of the service somewhat in making their charges; that is your idea?

Mr. PANCAKE. There was this about it. Of course it entailed so much expense to establish an office and put one or two men there, and they did require us, or request us, to state how many cars we could use during the season, and then they would make arrangements and have so many cars either sidetracked near us or rolling in that section or division, or so we could take them up at any time.

Mr. MANN. How long would this office be maintained there?

Mr. PANCAKE. Which office?

Mr. MANN. The Armour office.

Mr. PANCAKE. During the season, beginning, I should say, about the 1st of August or the 20th of July and continuing until the 1st of November. Our season runs about three months.

Mr. MANN. Do they maintain an office there during every shipping season?

Mr. PANCAKE. Yes, sir; so far as I know.

Mr. MANN. Only during the shipping season?

Mr. PANCAKE. Yes; so far as I know. I am very frank to say that the little success I have made in the fruit business I have attributed largely to the good service the Armour people have given us. I do not know what we would do without them.

Mr. STEVENS. You came here at their request to tell us this?

Mr. PANCAKE. Yes; and I came realizing that it is an important thing to me. I do not know what we should do without them. Our industry certainly must suffer, gentlemen, it seems to me, if private lines are abolished and the railroad companies give us as good or better service free. As a matter of course, human nature is alike everywhere.

Mr. STEVENS. That is to say, if they charged you in the aggregate, including cost of refrigerator car and refrigeration and transportation, the same you pay now for the same service, you would be satisfied?

Mr. PANCAKE. I can not see what advantage that would be to the shipper—to trade off the bridge that has carried him for a new one. They might promise to do it—

Mr. STEVENS. What you mean to say is, then, that you demand of the railroads that they shall furnish free the same service you get now by paying for it to the Armour company?

Mr. PANCAKE. Unless they do our business would certainly suffer,

because we find the Armour service is none too good. We should certainly suffer unless they did that.

Mr. STEVENS. What you want is the service, first?

Mr. PANCAKE. What we want is the service, and, as I stated at the beginning, I would willingly pay 25 per cent more than the Armour company are charging us rather than take any risks.

Mr. MANN. Are you interested in any way financially in the Armour company?

Mr. PANCAKE. Not at all, sir.

Mr. MANN. Have you any interest in this matter except as a shipper?

Mr. PANCAKE. None at all. I am looking after number one, and I tell you frankly I do not know what we shall do if we do not have this service. Peaches should be eaten twenty-four hours from the time they leave the trees. I know they can be shipped thousands of miles, but they have to be pulled from the trees in an immature condition. We let them get ripe, and then it takes good refrigeration, and, as Mr. Hale said, we frequently divert our cars after they have started. Last year some peaches that were consigned to Pittsburg were diverted to Cleveland, for instance. We do that without the slightest hesitation, and we realize that we can carry them around from one market to another and then hold them in market for a number of days without any risk. As I see it, the business can not succeed without that.

Mr. MANN. Have any other refrigerator lines offices in your vicinity?

Mr. PANCAKE. None that I know of, sir.

Mr. MANN. So that you are obliged to depend entirely on the Armour service?

Mr. PANCAKE. Not at all. We have the Baltimore and Ohio—this old rattletrap concern—the Baltimore and Ohio cars. They do not furnish half enough of them, even such as they are, however. Then we have Swift; he has an office in Cumberland in connection with his storage house there. And, as I say, the representatives from the different lines frequently solicit us; but we have abandoned them all because we think the Armour cars are so much better.

Mr. MANN. Are there many shippers in that vicinity?

Mr. PANCAKE. There are a few small shippers. The peach belt in our section is comparatively new, comparatively young. We are the largest there, sir.

Mr. MANN. How many acres have you in peach orchards?

Mr. PANCAKE. We have in round numbers about 1,400 acres.

Mr. MANN. How many trees?

Mr. PANCAKE. Approximately 165,000 trees.

Mr. MANN. And what proportion of those have come into full bearing?

Mr. PANCAKE. They are all in full bearing, sir. We have some large private orchards. The different representatives in our company, or most of them, have large private interests, but they are not in bearing. The 165,000 trees are all bearing. The last of them came into bearing last season.

Mr. MANN. Are there many peach orchards in that locality which are not yet in full bearing?

Mr. PANCAKE. Oh, a great many, sir. As I say, they are principally in the hands of farmers and small growers, from one to ten to fifteen thousand trees.

Mr. MANN. Has there been a considerable extension of the business of peach planting there?

Mr. PANCAKE. It is expanding rapidly, sir; very rapidly.

Mr. MANN. Do you attribute that partly to the success in getting peaches to market in good shape by reason of the Armour refrigeration?

Mr. PANCAKE. We greatly prefer that refrigeration to express, although express is quicker. We greatly prefer it at the same cost, because the peaches are nailed down solid in the car and then they are handled by our commission men at the other end carefully, whereas the express company knocks them to pieces. The package is necessarily rather frail, and we prefer refrigeration to express, even if it were the same cost.

Mr. STEVENS. Please give us the cost to forward to New York by express and the cost of forwarding your peaches by refrigerator cars. What is the comparative cost between express and refrigerating cars?

Mr. PANCAKE. Well, I know we have had the question up repeatedly, and we have concluded that there is not a very great discrepancy in price as between the two.

Mr. STEVENS. Could you give us the prices? What do you pay for express on your peaches from your station to New York?

Mr. PANCAKE. I think, sir, in less than carloads that it is \$1.

Mr. STEVENS. One dollar a hundred?

Mr. PANCAKE. A dollar a hundred by express. The railroad freight from our station—I will mention our central station, it varies a little—is 43 cents.

Mr. STEVENS. And what is the Armour car rate?

Mr. PANCAKE. The Armour car service to this same point is 43 or 43.50.

Mr. STEVENS. That makes it 86?

Mr. PANCAKE. Yes, sir.

Mr. STEVENS. 86.50?

Mr. PANCAKE. And that includes the service of refrigeration and handling and everything, everything except possibly a little cartage in some instances at the New York end.

A BYSTANDER. That is a carload, is it not, instead of a hundred pounds?

Mr. PANCAKE. Yes; that is a carload.

Mr. MANN. Do you mean 43 cents a hundred or \$43 a carload?

Mr. PANCAKE. It is \$43 a carload for refrigeration and 43 cents a hundred railroad freight, which added makes 86—

Mr. MANN. No; that would not make 86 cents, because you can not add \$43 and 43 cents and make 86 cents.

Mr. PANCAKE. Oh, no; I see.

Mr. STEVENS. Then you make two contracts—one with the railroad company for your transportation and one with the Armour Car Line for your refrigeration service?

Mr. PANCAKE. We go to them at the beginning of the season. We say, "We are going to have a crop this season and we want your cars." The first question asked us is, "How many cars can you use?" Well, we approximate the number as near as we can. There is a memorandum made of it, and then they send a man to take charge of the business. Then, we make no contract with the railroad people, because they have an open schedule.

Mr. RYAN. The contract with the Armour people is a verbal agreement?

Mr. PANCAKE. Well, it is submitted in writing, of course.

Mr. STEVENS. Then, it is a written contract between you and the Armour people?

Mr. PANCAKE. If you term that a contract; yes.

Mr. STEVENS. It is a memorandum?

Mr. PANCAKE. It is more in the nature of a memorandum. We stipulate how many cars we will take and approximate as closely as we can to how many we think we will need. I believe this year it ran over that number estimated.

Mr. STEVENS. You agree to take so many cars and they agree to furnish them and do what else?

Mr. PANCAKE. They agree to furnish them and equip them thoroughly with ice, and carry them through to their destination, reice them in transit and deliver at point of destination.

Mr. RYAN. And you pay the Armour people for the service rendered?

Mr. PANCAKE. As to that matter, sometimes we do at the close of the season, but not infrequently it is collected by attaching it to the bill of lading at the other end, which is the same thing. We have frequently used the cars of these—well, the Baltimore and Ohio is the only line—

Mr. RYAN. If you stipulate that you will take 200 cars and you only take 175 cars, what will be done in that case?

Mr. PANCAKE. The price made to us is upon the basis of 200 cars, or whatever it may be. Then there is some little penalty per car for the balance of that 25 cars. I really have forgotten what that is, but it is small.

Mr. STEVENS. So if your crop were a failure what would happen?

Mr. PANCAKE. The contract is made in that way. We make the contract supposing we will have a crop, and it is understood it is canceled if there is no crop.

Mr. STEVENS. Oh, it is canceled if there is no crop?

Mr. PANCAKE. In other words, we do not make a contract until the crop is assured. Last year I remember our contract was not made until the middle of June.

Mr. STEVENS. When do they begin to ship their cars in and get ready for you?

Mr. PANCAKE. As a rule, I think about the 20th of July. We notify them when we are ready.

Mr. STEVENS. And the cars are not brought in until the time comes to use them?

Mr. PANCAKE. If they are I do not know. As I say, they have cars rolling east and west past our station.

Mr. STEVENS. And you do not see the cars until the time comes for you to use them?

Mr. PANCAKE. No; we do not. I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF MR. A. C. MATHER, PRESIDENT OF THE MATHER STOCK CAR COMPANY OF CHICAGO.

Mr. MATHER. Mr. Chairman and gentlemen, we own about 5,000 stock cars, and I might say in this connection that I think these complaints ought to be better defined. These complaints against the car companies ought to be confined to the singular instead of the plural, because, as far as I can learn, there is no complaint filed with the Interstate Commerce Commission against any private car company (with

one exception), and I will defy anybody to find a complaint filed with the Interstate Commerce Commission against any private stock-car company. I have here a list of the private-car companies in the United States, so that you will understand the importance of any legislation on this subject. This book, the Official Railway Equipment Register, gives nearly 500 private car companies, representing probably \$100,000,000 invested in various parts of the United States, and this is not complete, because I notice the name of Armour Car Company is not mentioned in it. So it probably does not constitute more than three-quarters of the present private car companies in existence.

Mr. STEVENS. How many did you say?

Mr. MATHER. Nearly 500 car companies, probably representing \$100,000,000 of capital.

Mr. STEVENS. Would you say that the greater portion of those private cars are refrigerator cars?

Mr. MATHER. They are all conceivable kinds of cars for all conceivable kinds of business. There are tank cars, furniture cars, basket cars, and cars for shipping street cars and all sorts of specially constructed cars.

Mr. STEVENS. Could you put those facts in the record in your testimony?

Mr. MATHER. I can leave this and you can examine it. Here is a condensed list, and it shows the number of cars and the officers of the various companies and the various businesses which they are engaged in. It is a very important book for you to have in your deliberations, because you can not legislate for one and not for another.

Mr. STEVENS. Could you leave the book with us?

Mr. MATHER. Yes, with pleasure. I wanted to speak one minute of a matter which is of vital interest to me, and that is Mr. Furguson's proposition the other day that you close our shops. We are a small concern, comparatively speaking, but employ constantly in Chicago approximately 100 men on repair work alone. Now, his proposition to enact legislation to prohibit the use of our cars, and thus close our shops and render our property valueless, fairly took my breath away. I have listened to anarchists in Chicago, but I never was more surprised than at this proposition.

Mr. RYAN. You are not in favor of that?

Mr. MATHER. I did not lie awake one hour on account of the fear of such legislation. I only wanted to refer to it.

Mr. MANN. You may not lie awake an hour on that account, but still we are proposing to do a great deal more than that in the bill which may pass the House to-morrow. This would not be a drop in the bucket compared with that.

Mr. MATHER. The bill that you will pass to-morrow covers the whole situation. What I say is that you should speak in the singular and make it more definite, or to make it absolutely definite in referring to these charges against the private-car lines.

Mr. STEVENS. I do not think you need concern yourself about that, Mr. Mather. Now, tell us the nature of your business, how you conduct your business, whom you make your contracts with, and what do you agree to do, and how you do it.

Mr. MATHER. I was about to say that there have been some accusations made as to the large earnings of our cars, and I have prepared a little article to offset these statements and I would like to read it and

have it go in as a part of my statement. It will not take me but a few minutes.

Mr. STEVENS. Could you not leave it with the stenographer; would not that do?

Mr. MATHER. There are some things I would like to touch on.

Mr. STEVENS. Proceed as rapidly as possible.

Mr. MATHER. It will not take but a few minutes. We have had our troubles, you know, and a few years ago Mr. Midgley, who was joint traffic commissioner in the West, took the trouble to make a fierce attack on the private cars generally. His ground was that they were making such exorbitant profits and so on. I do not say but what sometimes he was misled, because the car business is most deceiving, as perhaps you can imagine. A man says to me "Mr. Mather, your cars run a hundred miles a day and you get 6 mills a mile." That is 60 cents per day or \$18 a month. He does not realize that over a third of the time, or probably two-thirds of the time; usually those cars are idle, and at other times are badly delayed.

This is "A word on the other side of Mr. Midgley's fierce attack on the so-called private cars or special equipment." [Reading:]

No account apparently taken of the large percentage of cars waiting for loads, or in the repair shops. How the reduction from three-fourths of a cent to 6 mills per mile run brought ruin to two large companies and many smaller ones, a reduction which never ought to have been made.

I believe experience has shown, and it is generally acknowledged by all up-to-date railway operators, there is a great advantage in having a large supply of well-kept special cars to draw from at the great railway centers as occasion and business may require, and fair compensation should be paid for their use to justify their proper maintenance and charges, for the commodity transported in them ought to be enough to cover the extra expense, if there is any, and thus encourage the ingenuity and enterprise of the people to conceive and develop all improvements possible for the safe, rapid, and economical handling of all products shipped by rail. And I believe everything has been done that patience, money, and ingenuity could devise to add to the comfort of all classes of live animals in transit, from a chicken to an elephant; also in the way of convenient and economical transportation of special machinery, street cars, dressed and cured products; and in no other way do I believe such perfection could have been attained except by the broad gauge and liberal policy of the railroads in handling anyone's equipment whose running gear passed inspection, and it will be noted that most of these wonderful improvements are due to individual ingenuity, capital, and enterprise.

In this connection I might state that my experience of nearly twenty years has been confined entirely to owning and operating improved stock cars, and while the stock cars of to-day may seem simple, they have only been brought about by a vast expenditure of time and money, many sleepless nights, and disappointed inventors, and, in view of all the circumstances, I do not feel that a recital of my experience will be uninteresting or out of place, as it has probably been the experience of nearly all others in introducing any change or new invention in the car line.

So far as Mr. Midgley's ideas are concerned as to the vast profits in operating private cars or special equipment at 6 mills a mile, I presume there is not a railroad manager in the United States who does not know at the end of each month the average earning, as well as the average number of cars, of any special class of equipment on his line, and the errors Mr. Midgley makes in his estimates of earnings, especially of stock cars, with which I am familiar, must be very apparent.

I do not believe there is a railroad in the land on which the average earnings of any line of stock cars will exceed \$9 per month per car, unless it might be some line between Chicago and Buffalo, where the railroad takes the cars at Chicago and runs them on fast time to Buffalo and there delivers them to some connecting line; but this is not a fair sample of the average earnings of any equipment, as, while on that road they are in constant motion, in reality much of their time is spent in waiting for loads, in the repair shops, or are badly delayed by railroads. Take, for illustration, the Street's Stable Car Line, probably the largest private-car company, and by referring to their published report of earnings it will be observed that for the three years 1899 to 1901, inclusive, they have averaged gross about \$8.22 per car per month, and I notice by a published statement in the Railway Age of September 18,

1903, it cost the Atchison, Topeka and Santa Fe Railroad an average of \$101 per car per annum for maintenance, or nearly \$8.50 per month. So it is very apparent there is a great lack of harmony between the high prices of material and labor and consequent increase in the cost of repairs and maintenance, and the 6 mills per mile allowed for the use of the cars ought to be restored to the original figure of three-quarters of a cent per mile run, and I doubt if there is any other private-car line in the country, except possibly some refrigerator line, who can make a better showing than the Street's company. The great source of loss of any special class of equipment is the large number of cars which have to be carried at the great shipping centers waiting for loads, the demand for which shifts quickly with the least change in the market, and cars must be kept on hand at the various shipping centers to supply the demand immediately, as all orders for stock are sent by wire as soon as the market reports are received by those desiring to purchase.

Now, you understand that all the stock-yard centers, Cincinnati, Chicago, and St. Louis, have their correspondents. Stock comes in and they wire the market in St. Louis, the market in Chicago, and so on. The market that is the cheapest is where the buyers wire to buy. I am speaking now of the cattle trade, you know. If they buy in St. Louis, you have to have a supply of equipment there to supply their requirements; and if they happen to wire Chicago, you have to have a supply there. Consequently you can see how a large equipment has to be kept at various centers and always available.

Mr. MANN. You mean kept idle there?

Mr. MATHER. Yes; and stored near the yards, you know, a very large amount of equipment.

My first experience in this line of work was in 1881. While on a journey east I was detained for twelve hours on account of a wreck, and by the side of the car which I occupied was a stock train having been many days on the road, in one car of which were five dead steers and several maimed and bleeding ones, caused by the frantic efforts of one large and powerful animal in working his way from one end of the car to the other, in accordance with his natural instinct in search of food and water. I thought such a state of affairs ought not to exist in this civilized land, and at once went to work to design a car in which stock could be separated, fed, and watered in the car, obtained a patent, and started out on my mission among the railroads (at first from a purely humanitarian standpoint), and almost without exception I was met with the reply "We have no time or money for experiment; if your trucks pass inspection, we will haul your cars and allow you three-quarters of a cent per mile." And although I used every effort in my power, spent hundreds of dollars in traveling, I could not get a railroad to build an improved car.

Determined not to give up what I believed to be a good and worthy cause, I started out to build a car on my own account, and it is needless to add I expended nearly \$10,000 before I got a car that would stand the abuse and hard usage a stock car was subject to. The racks would be broken down each trip by the cattle, the troughs out of place, and at that time it was thought necessary to partition the cattle off and separate them one from the other. But experience soon taught that so long as the animals had even a quid on which to chew it seemed to allay their natural instinct to migrate in search of food, and they would ride content without hardly leaving their tracks from Chicago to New York. Having completed my car I started out to prove its usefulness, not only from a humanitarian standpoint but from the commercial side, in the saving of shrinkage, and so forth, and in June, 1881, made my first trip from Chicago to New York, loading two stock cars, one my improved car, in which I put 18 head of cattle, and an ordinary railroad company's car, in which I put 17 head, the 35 head being raised by the same man on the same farm and under precisely the same conditions, witnesses as to their weight affixing their signatures at the scales just before being loaded in Chicago and after being unloaded in New York. The cattle were run through to New York; those in the improved car were fed and watered in the car while standing on the side track, while those in the common car were unloaded, fed and watered in the yards.

Being determined there should be no question in regard to the difference in conditions of shipment, I held the improved car so as to keep it in the same train with the common car, thereby losing twenty-four hours in time. On arrival at New York they were at once run over the scale and shrank 32½ pounds per head less than those in the common car. I also followed the cattle to the slaughterhouse and got the dressed weights from the butchers, and the average dressed weight to the live weight,

compared with those shipped in the common car, was a little better, demonstrating fully that the saving in shrinkage was in the meat tissues. I also made similar tests at various seasons of the year, details of which I have in full, a general summary of which I give below, in each case personally accompanying the car, frequently inspecting the cattle while in transit, both night and day, climbing over icy cars while in motion in order to see the condition the cattle were in.

I might say in this connection, and I hope you will not consider it egotistical or anything of that kind, for I am greatly interested in this matter, that on each of those trips the humane society deputized a special agent to accompany the cattle and see that they were handled properly, and as the result of that work, after a meeting or convention—or you might say a congress of the American Humane Society, in Boston, in which was represented the Illinois Humane Society and the New York Humane Society—the Pennsylvania Society and nearly all the States in the Union passed resolutions awarding me a gold medal, Mr. Chairman, which I have here, and which I very much appreciate, coming from them. I value this more than the money I have made in the business, coming from a congress of humanitarians, as it did.

I might say in this connection, too, in favor of the work that we have done, at the close of the Spanish war we had applications for our cars to bring back a great many horses and mules from Cuba. Of course, justly, the soldiers met a great reception, but the mules and horses risked their lives as much as the men. So I told our men to see that every car that went to Mobile was in first-class condition in every respect, in appreciation of which I got a very nice letter from Quartermaster-General True, of the War Department, informing me that they were very much pleased with the condition that the Government horses and mules were in when they came back. We handled several hundred loads from Mobile.

I have here a summary of trips showing the result as to shrinkage saved between the common and our improved stock cars between Chicago and the seaboard:

General summary of trips, showing result at different seasons of the year.

Date.	Shrinkage in common car in pounds per head.	Shrinkage in patent car in pounds per head.	Shrinkage in favor of patent car in pounds per head.
October 22, 1881	50	17½	32½
February 18, 1882	65½	46½	19½
June 1, 1882	56½	40	16½
August 21, 1882	24	10½	13½

[Reading:]

Thus it will be seen the average saving in shrinkage at all seasons of the year was a fraction over 20 pounds per head, at the low average of, say, 6 cents per pound (as only the best quality of native steers are usually shipped to the seaboard), and this would amount to \$1.20 a head. From the last annual report of the Union Stock Yards and Transit Company there were shipped from Chicago since 1881 21,273,200 head of cattle to the seaboard, which would mean a saving to this industry of \$25,427,850 through the use of improved cars, to say nothing about the 57,901,954 head which were received at Chicago during the same period, very many of which had the advantage of being handled in the improved cars. While I do not claim credit personally for this vast saving in money, time, and cruelty through the introduction of improved stock cars, I have contributed my mite, and prior to the advent of improved cattle cars there was hardly a train load arrived in Chicago or New York but what the unloading platform was strewn with crippled, dead, and maimed animals that would turn the face of the stoutest heart. How different now!

Having proven to my own satisfaction the advantages of improved cars, I again went to the railroad managers and received the same answer, both verbally and by letter:

"We will haul your cars and pay you three-fourths of a cent per mile run, but will not build or adopt any improved cars or waste any time or money on experiments."

And to show the wisdom of this answer it is only necessary to refer to the Patent Office records, from which I notice there have been granted 474 patents on improved live-stock cars. Assuming there was expended on each one of these patents, in obtaining the same and experiments, \$1,000, which I would consider a low estimate, we have nearly a half million dollars expended on improved stock cars in what might be termed experiments to produce the simple affair it is to-day. With the above assurance, and having expended so much time and money, I resolved to go into the business. I organized a company for the purpose of building improved stock cars. I worked night and day among my friends to raise money for that purpose and risked nearly my own last dollar in the venture, as \$50,000 or \$100,000 would not build many cars, and time has proven the same capital at that time invested in other enterprises might have paid much better.

About the same time many other companies were organized. Much was said in the press, and the business grew, as naturally it should with so much in its favor; millions of dollars were invested in improved or so-called private cars, until nearly all the live stock was shipped in them from the ranch as well as to the seaboard, as the saving in time in transit on account of not stopping to unload for feed and the other advantages were so great that the demand for cars far exceeded the supply, and with quick handling of the same at three-quarters of a cent a mile the business was profitable. The business grew rapidly until about 1893, when during the hard times the railroads saw fit to reduce the mileage from three-quarters of a cent to six-tenths of a cent per mile run. This was a terrible blow to all car interests and entirely too low and brought many to the verge of bankruptcy who were engaged in the business.

As soon as materials and labor commenced to advance some of the companies began to find their repair bills almost equal to their total receipts and were forced into the hands of receivers. Notably, the Hicks Stock Car Company, which had some 2,400 cars. This was soon followed by the Canda Cattle Car Company with some 2,600 cars. Both of those companies were sold out by their creditors. The same thing happened to many smaller concerns, and of all those enterprising men who started in the business some twenty years ago for the purpose of bettering the condition of animals in transit, save myself, not one remained. Street, the most enterprising of all, who, to my personal knowledge, mortgaged his home and all he possessed to build his first car, died many years ago comparatively a poor man. Montgomery, Canda, Hicks, Burton, and many others were obliged to give up when the 6-mill rate went into effect and their cars have all passed into other hands, and why Mr. Midgley should devote so much time, and not only cruelly but unfairly assail any interest where millions have been invested to supply a need that was so absolutely imperative and had to be attained through enterprise, is more than I can understand.

I think no man has a right to so persistently assail any large interest where the blow is liable to glance and seriously hurt innocent parties, and I can not believe his intention is to do anyone so great an injustice, although he seems to take for his illustrations shippers who have two loads of stock to one car, and fill in their shortage from outside equipment.

I want to say here that it is customary in England for the shippers to own their own cars, and they receive mileage the same as we do here, and it usually is about half a cent per mile run, but their cars hold only 5 or 10 tons, while ours are of 30, 40, and 50 tons capacity. None of them are less than 20 tons, or 40,000 pounds. [Reading:]

Of course a few cars in the hands of a very large shipper might earn somewhere approximating Mr. Midgley's figures, running between two given points, but this should not be a criterion to go by; nor should the man who has the resources of a large business at his command be discriminated against. Of upward of 14,000 humane stock cars built by private enterprise and capital not to exceed 500 are owned by shippers.

I believe it is an acknowledged fact that it costs the railroad companies from \$3 to \$4 a month per car for repairs, and special equipment would naturally cost more. Add to this 6 per cent depreciation and we have at least \$7 per month per car fixed charges against an ordinary stock or freight car which must be earned before any-

thing can be set aside to pay interest on the investment and ordinary running expenses. Take 30 cents per day on the per diem basis and it would barely leave 4 per cent on the investment, and I believe a fair rate of mileage is safer for the railroads and broader gauged in every way. It pays a man for what he does. The coal miner might have the capital and feel he could make money by owning 200 cars more than his ordinary requirements, so as to never be short of equipment, or a large manufacturer of machinery requiring special equipment might either build himself or have built for him a car which he did not use oftener than once a year, and then for long runs. Would a per diem be fair compensation for the use of such a car? I presume there are 150,000 special cars, representing an investment of over \$100,000,000, in use in the United States to-day adapted to all kinds of purposes which money and ingenuity could devise, and the broad-gauge policy of railroads has stimulated the inventive talent of the country to great rivalry in producing the best car that could be devised for the purposes for which it was needed, and thus we are far ahead of all other countries in the speedy and safe transportation of all kinds of commodities in great volume. In fact it is the volume of business and vastness of the country that has developed the private-car interests to their present greatness, and the compensation should be fair and not be gauged by what is done in spots, but taken as a whole.

I believe it is generally acknowledged that with the greatly enhanced cost of material and labor, three-fourths of a cent a mile is none too much for the use of special or private cars, and it is far better for the railroad companies to be relieved from the responsibility of furnishing or maintaining this class of equipment and then there is no chance for complaint. It is also far better and safer, as the railroad companies of to-day are of such vast proportions, to pay for the work actually done, and I believe that the trainmen and engineers on nearly all the large roads of to-day are paid by the trip, and as much work as possible done by the piece. In fact, railroading of to-day and in 1885 are very different propositions, and if Mr. Midgley believes, as some claim by his bitter attack on private car lines, he can induce the railroads to take any backward steps or invest something over a hundred million in buying up the 150,000 or more special cars now in service and stopping future development and improvement in that direction, I think he is laboring under a delusion, as I believe it to be entirely impracticable on account of the vastness of the country, diversity of requirements, and many interests involved.

I want to say that there is nearly always a motive in everything. And since this agitation has come up Mr. Midgley has come out with a circular to the various railroad managers stating that on account of the present agitation over private cars it would be a very good time to put them on a per diem at a low rate. On a per diem of 30 cents a day we could not live. He advocates something to that effect. And he also incidentally mentions that it would be a good time to get up a company among the railroads and absorb these cars; take them over, I presume, at their own price.

I want to say that it might be interesting to these gentlemen, and I believe to-day that if they have such a source of grievance they could with \$10,000 easily build 20 refrigerator cars to suit their own ideas. That is, say they cost \$1,000 apiece. They could easily borrow \$10,000 on 20 cars. With 20 cars if they made the trips they claim they would make about 720 trips a year, which, if the contents was worth a thousand dollars, you see they would do a very large business. And I believe there is no occasion for their being oppressed in any way provided they are allowed to use their own cars if they want to. And of course I certainly feel that they ought to be—

Mr. STEVENS. Right on that point, can they use their own cars under the system of exclusive contracts?

Mr. MATHER. No, sir; I do not suppose they could.

I met a cattleman who was a large shipper, for whom I have handled hundreds of thousands of head of cattle. He took hold of my hand. He said "Do you think legislation is apt to affect your business?" I said "No," and then I got to talking about what he thought

was the least capital he could start in with in dressed-beef business in competition with the so-called trust. The result of our conversation was that this so-called trust is not such a terribly formidable thing after all, if people had a little capital and a little sand to go into the business. We figured it out that with \$50,000 he could do very well. A man with \$50,000 could put \$10,000 into cars, for which he could get 20 cars (refrigerating cars) he would put \$10,000 say into a plant, which would be a frame building near Chicago. That would give him \$30,000 left to handle the business with, and he could kill and dress his beef and ship it east. This gentleman then said: "The trouble is if I ship it down to Meridan, the so-called trust would put the price of their meat down to such a figure there that I will be ruined." Then I said: "Ship it to New Haven." "They would do the same thing there," he said. I said: "Suppose you ship it to New York; there are plenty of commission men there, and would they care to cut the price there to ruin you." He says: "I don't know, but I don't think they would cut the price there; because where I would lose \$1 they would lose hundreds of dollars. So I don't believe they would."

So I really believe to-day. Mr. Chairman, that a man with \$50,000 capital and a lot of sand could start in the dressed-beef business and do business and make money.

Mr. MANN. That is another story from the one you were talking about. I am afraid that if you get into that we will not be able to close this morning.

Mr. MATHER. I only refer to that to show that a good many people are more frightened than hurt. I only refer to that to show that there is a possibility for a man to live to-day even in the beef business. But I had just a few memorandums here I wanted you gentlemen to think over, and I will not take more than a few minutes more to read.

Any legislation, so far as private-car lines are concerned, might do incalculable harm by limiting and discouraging the inventive talent of the country in developing, introducing, and making improvements in the construction of specially designed cars. These cars have been of great benefit to the railroads on account of having a supply to draw from at the principal shipping centers, and a great benefit to the country at large by the savings in transfers, and the quick, economical, and safe transportation of nearly every kind of commodity, as nothing adds to the wealth and prosperity of the farmer or manufacturer, or enhances the value of land or goods manufactured, so much as perfect means of transportation, in such cases as the nature of the product requires and will admit of specially designed equipment.

Supposing laws were passed requiring every hotel in New York to charge the same rate as the Waldorf-Astoria and they could accommodate the guests, how many would the other hotels get? It is just the same with the strong railroads and the weaker lines. If the less favored roads running to and from the same point were not given a chance, the straighter, better equipped, and easier grade lines would naturally do all the business. If you were to pass laws requiring the car companies to accept the same rate of compensation as the railroads pay between themselves for the use of their cars, a great injustice might be done, as the use of cars between railroads is reciprocal, and it is generally acknowledged the present rate of 20 cents per day and penalty now paid between railroads is barely enough to pay for maintenance without anything for interest and depreciation, which it is said only

prevails, as it is found from experience that the average number of cars on A's line belonging to B is about the same as those on B's belonging to A. So you see there is a sort of reciprocity between railroads which does not exist between a car company and a railroad; besides there is such a vast difference in the original cost and cost of maintenance of specially constructed equipment great injustice might be done, and it would appear the only legislation which would be constitutional would be of that nature which can be applied to common carriers. In the true sense of the word a car owner is not a common carrier, has no rights of eminent domain, and can do no transportation business, and legislation controlling a private car company is the same as legislation controlling any strictly private business.

Some claim excess rates of mileage for the use of certain classes of cars are paid amounting to rebates. I think the claim is not true. But if that is true, compel the railroads to comply with the present law and publish their rates of mileage paid for the use of cars, and pay the same to every one, making no exclusive contracts, and other cars would soon come into the field, in these days of stiff competition, if such rates afforded more than a reasonable profit. This puts the proposition on a strictly business principle, does no injustice to anyone, and would save the Government a vast amount of detailed work by the private cars being brought directly under the interstate commerce act. I notice the railway equipment register of January, 1905, shows over 400 individuals, firms, and corporations who have, at large expense, constructed specially designed cars adapted to the better and more economical conducting of their business, to many of whom, I believe, it would be very embarrassing, if not next to impossible, to comply with the requirements of the interstate commerce law, and I repeat there is no doubt that the just and true solution of this question is for the railroads to publish the rates of mileage paid, make no exclusive contracts, and put all car owners on the same footing, requiring the railroads to correct any abuses or overcharges to shippers by the car owners of any nature whatsoever, which is entirely within their power, and which I am sure they will gladly do whenever the charges are properly put before them. I mean to say that if any shipper is aggrieved I believe the railroads would gladly correct the matter.

I have a memorandum here of a few advantages to shippers through the use of private cars:

First. Railroads naturally give preference to very large shippers, and when a large supply of independent cars is kept at the great shipping centers the small shippers can always be accommodated and are never refused by the private stock car lines, and I do not think you will find a complaint of that nature, in fact of any nature whatsoever by a shipper against a private stock car, on record among the files of the Interstate Commerce Commission.

Second. Great saving in time and shrinkage and the better condition of the product transported and ability to always get cars.

A few advantages to railroads of the use of private cars are as follows:

First. It would take many times the number of cars to do the same business if each road were compelled to carry a proper complement of special equipment.

Second. A good car, having special advantages in construction, in a measure offsets on a weak line the advantages of a straighter track, easier grade, and the better motive power of a stronger line.

Third. Experience has proven it is cheaper for the railroads to get their special cars in this way than to own them.

I want to say here it would be almost impossible for us to comply with the present interstate commerce law as to a private car company. We do a very large business for fairs, with men who exhibit fancy stock at fairs. They will come to us for a car for the circuit. They will want to partition the car off and put a double deck in. They have a fancy animal they want to put in the front end and they want to put some grain and things in the other end. We will fix the car up to suit their taste, and in consideration of that we will make them a special rate, so much for the month or two months, covering the time they want it.

Mr. MANN. You say special rates. You make them a rate?

Mr. MATHER. Yes, sir.

Mr. MANN. You do not have any published rate for that?

Mr. MATHER. I say it would be impossible to make a published rate.

Mr. STEVENS. You would give anybody else that demanded the same service the same rate?

Mr. MATHER. You might compare it to a traveler who has a trunk made to suit his convenience. You could not put a trunk maker under the interstate commerce act.

Mr. MANN. We could if he ships the trunks, perhaps.

Mr. MATHER. Yes; they ship them. But we make these cars to suit their convenience, and I might say in this connection, that it does me more good to please a customer, and some of them are as happy as a child with a new toy—

Mr. RYAN. The question of the price of the service rendered does not enter into it?

Mr. MATHER. Of course we expect to get fair compensation, but we are always reasonable and our customers are more than satisfied. I do not believe we have a customer that uses our cars that would not gladly, if they thought it necessary, even unsolicited, write you a letter and tell you the benefit we have been to their interests.

Mr. RYAN. Just two questions, if you please. Have you any exclusive contracts on any railroads in the country?

Mr. MATHER. None whatever.

Mr. RYAN. Have you any advantages at stock yards or other places that are not enjoyed by other private-car line companies?

Mr. MATHER. None whatever.

Mr. STEVENS. Do you know that any other private stock car companies have any advantages over you?

Mr. MATHER. No, sir.

Mr. STEVENS. You do not complain of any?

Mr. MATHER. No, sir.

Mr. STEVENS. And do not know of any?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you make any private contracts.

Mr. MATHER. I should think it would be impolitic to do so.

Mr. STEVENS. You do not do it?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you make any special rates?

Mr. MATHER. No, sir; except as I have stated.

Mr. STEVENS. Suppose you render special service such as you have described; would you do the same thing for somebody else?

Mr. MATHER. Exactly the same.

Mr. STEVENS. Why would you not be willing to publish that rate then?

Mr. MATHER. The trouble is we would not know in advance what the man wanted. He comes to us and says "I want this car painted yellow, or yellow with red stripes." Some of those men are very peculiar about that, and they will stand at our shops and you can see by the expression of their faces how much interested they are in it.

Mr. MANN. If a man wants it painted yellow instead of an ordinary color, is not that giving him a discrimination?

Mr. MATHER. No; we will paint it yellow for anybody else. We will double-deck it or double-deck it half way and rig it up to suit him; but of course we figure that up with him and say "we will charge you so much for that."

Mr. MANN. Suppose the Interstate Commerce Commission were given the power to say the railroad company should furnish all these facilities which you now furnish, would it be possible or would it not be possible for the railroad company to publish a tariff based upon dividing their car in the same manner in which you proposed, so that all persons would know what that charge would be?

Mr. MATHER. It would be difficult, because people's ideas are so different, as I have said. We could publish a tariff stating that—but there would be no end to it—that a single-decked car, double-decked half way, with some extra partitions, would be so much. We might publish another tariff that double-decked cars all the way and repainted to suit the ideas of the party who wanted them would be so much, but it would involve no end of complications. I think, gentlemen, that there is no question but what you will reach the evil, if there is any, in this Townsend bill, and I do not see why you want any more.

Mr. RYAN. You need not worry about the Townsend bill.

Mr. MATHER. I read it over very carefully, and it seems to me that if there is any grievance that it is covered by that bill.

Mr. ADAMSON. If you could give us an opinion that you could cover it by existing law you would console us much more.

Mr. MATHER. I think the present law has not been enforced wholly; but the best way is probably to correct it.

Mr. MANN. Do you ever give rebates?

Mr. MATHER. We sometimes lease cars.

Mr. STEVENS. For whatever you can get?

Mr. MATHER. Yes. It depends on circumstances, you know.

Mr. MANN. Might I ask you a question in another direction while you are here, a question about these stock cars? Are you able to feed and water stock in transit?

Mr. MATHER. Yes; we are.

Mr. MANN. I mean do you do it?

Mr. MATHER. Nearly always—

Mr. MANN. Is it done with your cars?

Mr. MATHER. We have a few cars for short runs between Chicago and Buffalo where the troughs are not in. Of course, in those we could not water them—

Mr. MANN. I mean on long runs?

Mr. MATHER. Yes; and we do it right along.

Mr. MANN. You are aware, of course—

Mr. MATHER (interrupting). Going to New York they are watered at Suspension Bridge.

Mr. MANN. You are aware that the law is that stock shall not be kept in a car for longer than twenty-eight hours—

Mr. MATHER. Unless provided with facilities for feeding and watering.

Mr. MANN. There is no such provision in the law, and it never was in the law.

Mr. MATHER. I may be mistaken, but I wish you would refer to that.

Mr. MANN. You are mistaken. That is what I wanted to get at.

Mr. MATHER. You are familiar with it—

Mr. MANN. Yes; because I put a bill through this committee and through the House to cover that question, and there is no provision in the law except that they shall not be kept in the cars longer than twenty-eight hours without unloading. What I want to know is, whether it is possible with these improved stock cars to feed and water if cattle could be kept in for longer than twenty-eight hours on a stretch?

Mr. MATHER. Yes; we do it.

Mr. MANN. I know you do. The law is violated—

Mr. MATHER. I would like to know about that. Is that an amendment to the McPherson law?

Mr. MANN. That is the original law.

Mr. MATHER. Mr. McPherson introduced the law years ago, and it was my impression—

Mr. MANN. I have been informed that that law was introduced at the suggestion of the improved live-stock car men for the purpose of keeping in the provision which you suggest, but it was stricken out before it got to Congress, and the law provides that you can not keep stock in cars for longer than twenty-eight hours. This committee recommended a bill changing that so as to permit it, and to be kept where they could be fed and watered.

Mr. MATHER. That was very wise.

Mr. RYAN. It did not become a law.

Mr. MANN. No. The Humane Society defeated that legislation over in the Senate.

Mr. MATHER. I was not aware of that.

Mr. MANN. The practice out West is to unload.

Mr. MATHER. We do now a great deal, because of the stock yards—the stuff going East by Buffalo is unloaded at these stock yards.

Mr. MANN. I wanted to know whether it is practical and humane.

Mr. MATHER. Perfectly so.

Mr. MANN. To feed and water the stock in the cars?

Mr. MATHER. Yes. In the early stages of this industry the Humane Society watched this very thing with a very jealous eye, and they had agents nearly every trip that I made in the early stages go with me to see the cattle fed and watered in the car.

Mr. MANN. I think it is unusual for the Humane Society to wait for information before it offers its judgment.

Mr. MATHER. They did in this case, you know.

Mr. RYAN. What is the time between Chicago and New York City by the route usually traveled from your stock yards?

Mr. MATHER. Well, less than sixty hours. I mean without unloading. Of course, if they unload it takes a little longer.

Mr. RYAN. Then in that case you take care of them at Suspension Bridge.

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MR. The railroad company has feeding and watering facilities on Bridge where they feed and water them.

NS. Do you know that the railroad companies furnish facilities in the way of decorating and fixing cars for cus-

ER. I do not think they would undertake it.

Mr. STEVENS. They do in some instances.

Mr. MATHER. We do it because we are close to our business.

Mr. STEVENS. Do you not know that the railroads do it?

Mr. MATHER. They may do it, but not to my knowledge—

Mr. STEVENS. Do they not do it for some of the brewing companies?

Mr. MATHER. I doubt it. I think all the cars painted specially for the brewing companies are owned by the brewing companies. I may be mistaken about it.

Mr. STEVENS. You are mistaken on that, as I know. If they do it for the brewing companies why could they not do it as well for other customers.

Mr. MATHER. Well, it would subject them to a good deal of inconvenience, and they being very large institutions and they are not right down close to their interests like a small concern.

Mr. STEVENS. Why not? If they arrange cars for brewing companies and other companies as they do—paint them up and fix them up with different appliances needed by their customers—why could they not do it in other instances?

Mr. MATHER. I presume they might.

Mr. STEVENS. You say that there are no exclusive contracts in the cattle-car business?

Mr. MATHER. None.

Mr. STEVENS. You solicit business, do you not?

Mr. MATHER. No, sir; not now.

Mr. STEVENS. In what way do you get the business?

Mr. MATHER. It comes to us. The cars have become so well established that when a shipper wants a car the railroad agent telephones over to our shops and says he would like 10 cars, or whatever it is, and we say "All right."

Mr. STEVENS. Where do you have your shop?

Mr. MATHER. Forty-fifth street, Chicago.

Mr. STEVENS. Any other?

Mr. MATHER. A small place in East St. Louis, where we principally do repairing.

Mr. STEVENS. Any other place?

Mr. MATHER. No, sir.

Mr. STEVENS. Then if your cars were needed at Cincinnati or Pittsburgh or Buffalo what would be done?

Mr. MATHER. They are held there by the railroad companies on the sidings.

Mr. STEVENS. They send them from Chicago?

Mr. MATHER. Yes; or they stop them coming back from the east.

Mr. STEVENS. Now, in order to get business from the railroad companies do you give them any special advantages, one railroad over another?

Mr. MATHER. No, sir; not in the least.

Mr. STEVENS. Or give one time over another?

Mr. MATHER. No, sir.

Mr. STEVENS. In order to have your cars called for by shippers do you give one shipper an advantage because he asks for your car?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you give him any advantages in the way of watering or feeding stock?

Mr. MATHER. No, sir.

Mr. STEVENS. Do you know whether any of your competitors do likewise; have you heard any complaints?

Mr. MATHER. I am not familiar with that, but I have not heard any complaints.

Mr. STEVENS. You have no complaint to make on that?

Mr. MATHER. No, sir. We have had more demand for our cars than we could furnish.

Mr. STEVENS. On an even basis with your competitors?

Mr. MATHER. On an even basis; yes, sir. We have more calls nearly every day that come in to us from the railroads at Chicago and various places than we can supply.

Mr. STEVENS. Could you tell us the average monthly earnings per month of your car?

Mr. MATHER. They will not average \$9 gross.

Mr. STEVENS. What does it cost you to maintain them?

Mr. MATHER. I figure that it costs about \$3.50 a month for repairs.

Mr. STEVENS. That would be an average profit then of \$5.50 or \$6 a month?

Mr. MATHER. No.

Mr. STEVENS. What do your cars cost?

Mr. MATHER. Approximately, \$700 each.

Mr. STEVENS. What is the life of them?

Mr. MATHER. Of course, that is a little indefinite; they are constantly being renewed by repairs; we are constantly putting in new brasses, and new wheels, and new sills—

Mr. STEVENS. What do you charge off for depreciation each year?

Mr. MATHER. Six per cent, which is the Master Car Builders' regulation.

Mr. STEVENS. Do you abide by that?

Mr. MATHER. Yes.

Mr. STEVENS. Is that included in the \$3.50 monthly maintenance?

Mr. MATHER. That is not included; that is repairs alone; that is an extra expense.

Mr. STEVENS. So that the stock account and the depreciation account is extra?

Mr. MATHER. Yes.

Mr. STEVENS. What would that be?

Mr. MATHER. I say that it costs about \$3.50 a month for repairs, and our depreciation is 6 per cent under M. C. B. rules; that is what we calculate it costs us.

Mr. STEVENS. That would be \$700 per car, you say?

Mr. MATHER. That would be pretty nearly—

Mr. STEVENS. About \$3.50 more?

Mr. MATHER. About \$3.50 more. We do not net over 4 per cent on our investment.

Mr. STEVENS. On your actual investment?

Mr. MATHER. On our actual cash investment.

STATEMENT OF HON. GEORGE F. GOBER, OF GEORGIA.

Mr. Chairman and gentlemen of the committee, I am a lawyer; have been circuit judge for fifteen years, and I am also interested in several other things, one of which is peaches. I am to a certain extent familiar with the legislation by Congress within the province of the committee and the results. I understand the bill under consideration and appreciate, as a lawyer, some of the controverted questions presented to this committee and to Congress.

As a grower of peaches in Georgia, I am interested in this measure in so far as it affects my interests. I gave a contract last week for 85,000 peach crates to be used this coming season. These will fill about 150 cars with peaches. If all my orchards should bear fruit I would need a great many more crates than these.

The growing of peaches in a commercial way is a precarious business. You have a tender fruit and one that is marketed from 500 to 1,200 miles from the orchards. Two things are absolutely necessary—proper refrigeration and fast transportation. If we do not have these things our interests suffer. One trouble with us has been the failure of the railroads to make their advertised schedules. The peaches are sold at 1 o'clock in the morning on the dock in New York City. A car that is delayed goes over for twenty-four hours. I use New York for an illustration, but similar local conditions obtain in some other markets.

The railroad rates from Georgia are about 80 cents per hundred, and from California, \$1.25 per hundred. The distance is about three times as great. The Interstate Commerce Commission has said that the Georgia rate is reasonable, although the railroads will haul the same amount of stuff in the other direction for a much less rate.

However, to some extent we can get along with some delay in transportation. The Elberta peach, under proper conditions and with necessary refrigeration, will stand up well much longer than might be supposed. Without proper refrigeration it is quickly ruined.

There have been a large number of car lines engaged in refrigerating peaches and other fruits and vegetables. In Georgia last year there were about 6,000 cars of peaches produced and shipped. It is figured that it takes about eight tons of ice to start a car. The bunkers of the car are first filled, the car is loaded, and the heat of the fruit and the time consumed in loading, cut out a good deal of this ice. The bunkers are then refilled and the car is ready to go. At icing stations the bunkers are filled on the way, and to properly refrigerate the fruit the bunkers should be kept full.

To properly refrigerate fruit in transit several things are involved. First, there must be a large supply of cars. A car rarely makes a second trip from the same section during a season; possibly one-fourth of them do. This is an expensive equipment, in that the cars must be strong and tight; strong that they may carry the ice in addition to the peaches, and tight that they may hold the cold air and exclude the hot air. There is but one kind of car that a grower can afford to use, and that is the very best one he can get. These cars ought not to be used to transport many other things. I remember once that I used a refrigerator car that had been loaded with guano. My peaches got to market in bad condition. A car should be clean and sweet in order to

afford good results. Say there were 6,000 cars from Georgia last year; it would take about 48,000 tons of ice to start them going. To collect and house that ice, ready to hand just when you need it, is a tremendous undertaking. It takes a man who has had experience in the manufacture and storage of artificial ice to appreciate the undertaking. Natural ice, as far as I know, is not stored in Georgia. The representative of one of the refrigerating companies told me that last season his company used, in north Georgia, about 400 cars of natural ice from the Lake region, and after the loss by melting, the ice cost his company about \$5 per ton. This was in addition to all the artificial ice they could get in Georgia and Tennessee, and in addition to the ice required at reicing stations upon the way.

The shipping of a crop of Elberta peaches from a certain section lasts from ten days to two weeks. There is not a railroad in Georgia which could use such an equipment on its line of road for carrying peaches for more than three weeks in the year. It is a costly equipment, and should be of the very best. Its business management must be strenuous, exact, and wanting in no respect. Such a refrigerating company deals with big growers and little growers, and each one of them must have proper service and get it when he needs it. Delay here is more than dangerous; it is ruin.

This brings me to this point. The business of refrigerating fruit in transit is a business of itself. A large road like the Santa Fe, having citrous fruits to transport during the winter, might offer a refrigeration service, as I understand it does. But it has not got enough cars to haul the Georgia peach crop; and if it were in Georgia and depended on the Georgia business, it could not afford to own the refrigerator cars necessary. This service is separate and distinct from the transportation or pulling of the cars by the railroads after they are loaded. A railroad company gets its charter, builds its road, and becomes a common carrier. The largest part of its investment is in the right of way, roadbed, depots, etc. Upon such a corporation devolve many duties to the public, and it could not lay down these duties and get away from them if it wanted to. So far as its interstate business is concerned it is under the control of Congress.

I believe that any Congress of these United States will treat railroads and all persons fairly, if they can find out how to do it. However, when you come to deal with a refrigerating company, which has all of its main investment on wheels and has no charter as a common carrier, Congress can not compel it to perform this service in any particular locality. Its equipment could take wings in a night, and it might quit the refrigerating business any day it might conclude that it was no longer profitable.

As I have said, there are different companies. Armour & Co. claim to have 14,000 cars. Taking the cost of these cars and the cost of their icing stations, while I know nothing of their business, I would guess that that company has from \$12,000,000 to \$15,000,000 invested in this one business. What railroad company could afford such an equipment, and where would the growers of peaches be without it? It may be said that this company makes money. It ought to. I take it for granted that if there was nothing in it for them they would quit. If Congress should put onerous obligations upon them, they would withdraw or else give inferior service.

It has been urged that certain railroads give Armour & Co. exclusive contracts. I have called attention to the great preparation that must be made in connection with the service of these cars in order that that service may be proper and satisfactory. All these things which are necessary to be done, the collecting of ice, the packing of cars, the securing of help, and the requisite material for loading, make it good business for any refrigerating company to have an exclusive contract with a railroad if it can get it.

A refrigerating company with a large equipment can use its equipment in different sections of the United States at different seasons of the year. It can go where the business is. It can haul the oranges of Florida and California at one season and vegetables from certain sections at certain seasons. It can begin on the peach crop in the South in May and June and follow it to the end in October up in Michigan. In winter it can haul apples and potatoes. A railroad, being confined to one section, can not do this. It is a fact that this business can be done properly only through an aggregation organized for this special purpose. It is a business just as the sleeping-car service is a business, and any onerous obligations put upon it will fall upon the growers.

Since the Interstate Commerce Commission has determined that a rate of 80 cents from Georgia is a reasonable rate as compared with a rate of \$1.25 from California, no grower can hope for anything from that tribunal. I do not believe it would help the grower to place onerous obligations upon the refrigerating companies. I, for one, would prefer to deal with the refrigerating companies upon a business basis for the best service they can afford.

Now, as to the private car lines competing with individuals. It is said that some of those lines deal in produce and compete with the commission people. I do not know as to this, but I am sure that if those car lines will come to Georgia and handle peaches there are but few growers who would not be glad to sell to them. The growers have been trying for years to market their crop on the track.

Now, Mr. Chairman, I would be glad to answer any questions the committee has. I said that I was a lawyer. I have been interested in farming, though, sir, all my life, and I am like my friend Mr. Hale. I am interested in peaches. I am interested in about 3,000 acres of peaches. I had 1,500 acres last year that had no peaches. This year I expect to ship a good many peaches, if I have a crop. At least, I am president of a company and a large stockholder in it, located some 50 miles below Mr. Hale's place—45 to 50 miles. We have about 1,100 acres there. But I reside about 150 miles north of him, and that is where my main body of peaches is.

Mr. ADAMSON. What is your prescription, to let them alone?

Mr. GOBER. Well, so far as the refrigerating companies are concerned, I don't know that we have any complaint beyond about what Mr. Hale said.

Mr. ADAMSON. I didn't hear Mr. Hale.

Mr. GOBER. He spoke about the upper tier. We have complained about that. The refrigerating companies turn around and tell us that there is no money in it to them, unless they get the upper tier.

Mr. STEVENS. It is a question of minimum loading?

Mr. GOBER. Yes. The service of the Armour Company has been satisfactory, so far as I know. There has been something said in ref-

erence to the contract. So far as I am concerned I don't think I ever made a written contract with them in my life.

Mr. STEVENS. You make it with the railroad company?

Mr. GOBER. No; it is a verbal contract with them. These people will send their agents around very early in the season. They want an idea of about how many cars we will need, and in good time these cars are parked and arrangements are made for the ice. We go to them and tell them we need so many cars and those cars are on hand.

Mr. ADAMSON. What do you mean by "them;" the railroad company or the Armour Company?

Mr. GOBER. I mean the Armour Company.

Mr. STEVENS. What is your agreement with the Armour Company?

Mr. GOBER. We deliver these crates at the door of their cars. They nail them down and refrigerate them to our destination.

Mr. STEVENS. That is, they furnish the cars, the facilities, the refrigeration, from your point to some other point for a certain sum?

Mr. GOBER. Yes, sir.

Mr. STEVENS. That is the service they perform?

Mr. GOBER. Yes, sir; and they load these crates. You see, if we put them in there loose we would have to space them so that this cold air could get on either side of them——

Mr. STEVENS. Who loads them?

Mr. GOBER. They do.

Mr. STEVENS. And who does the unloading?

Mr. GOBER. I could not tell you, sir.

Mr. STEVENS. You do not do it?

Mr. GOBER. No, sir.

Mr. STEVENS. They do it?

Mr. GOBER. I suppose they do. I have been on the dock in New York City when they were selling these peaches, but I have never seen——

Mr. STEVENS. I wanted to get at the exact service performed by the Armour Company.

Mr. GOBER. They furnish the cars and load the peaches and reice the cars in transit.

Mr. STEVENS. All for one consideration?

Mr. GOBER. Yes; all for one consideration—I believe 12½ cents a crate.

Mr. STEVENS. They may or may not unload them—you can not say?

Mr. GOBER. I could not say. I rather think, though, that they unload them.

Mr. ADAMSON. Is that 12½ cents to them in addition to the railroad fare?

Mr. GOBER. Yes, sir.

Mr. ADAMSON. Suppose that Congress should require the railroad company itself to furnish this equipment, would it be your judgment that the equipment might be as good or better or worse?

Mr. GOBER. I think it would be worse. Every railroad can not have a separate icing station on the line between New York and Georgia.

Mr. STEVENS. No; but the Southern Railroad could. For example, could they not maintain the same icing stations that are maintained now?

Mr. GOBER. They might do that, sir, and the Southern Railroad does that. We ship cars over the Southern from some other roads,

and we deal simply with the initial road. The Supreme Court has held that you have to follow the road up. We have a Georgia statute that says you can hold the initial road.

Mr. ADAMSON. So, the interstate commerce has knocked up the old common law?

Mr. GOBER. Its seems so. You know what has been held in reference to stage coaches?

Mr. ADAMSON. Yes; that is what it does.

Mr. STEVENS. Do you think if the railroads refused to make joint rates that you would be without remedy then?

Mr. GOBER. Well, we are getting off in a big territory now. I don't like to talk about a thing unless I know exactly what I am saying.

Mr. STEVENS. But they do make joint contracts as a matter of fact?

Mr. GOBER. Heretofore the initial road has given us a bill of lading and we have taken our bill of lading. I think if this business were taken away from the refrigerating companies by Congress the business would suffer. Take one of these refrigerating companies and you will find that they have the best business men they can get.

Mr. ADAMSON. Is not this about your position: That you feel that you think it would be better to realize on your peaches during your lifetime than to prepare a good system for future generations?

Mr. GOBER. I suppose that would about cover it; yes. I know we get along under the present status, and I am afraid to change it. That is the truth.

Mr. STEVENS. Did the Central of Georgia consult with you concerning the making of exclusive contracts?

Mr. GOBER. We are not on that line. That is south of us.

Mr. STEVENS. Then you were not consulted concerning that?

Mr. GOBER. The Aiken road, upon which I have most of my peaches, has spoken to me about a contract with Armour for this year.

Mr. STEVENS. They have an exclusive contract?

Mr. GOBER. I could not say. I rather think they have, but they have asked me if it is satisfactory to me to ship with these people, and I told them yes, more satisfactory than anybody else. There is the Swift car, and the Armour car, and the C. F. X., and the C. F. T., and a whole parcel of them. I hauled a lot of crates 6 miles from a siding year before last to get shipment by the Armours. That road, it seems, had an exclusive contract with the Swift Company. I thought I had better service with the Armour Company, and so I hauled those peaches away 6 miles in order to ship them on the Armour cars.

Mr. ADAMSON. How many companies are there that furnish these cars?

Mr. GOBER. I could not tell you exactly. We deal with those companies that I have stated.

Mr. ADAMSON. If there are a number and they compete for business, may they not compete as well for wholesale business as for retail business?

Mr. GOBER. What do you mean by wholesale and retail business?

Mr. ADAMSON. If they all compete for a contract to carry the whole business of a certain section, is that unjust discrimination if one of the roads gets it?

Mr. GOBER. I don't know.

Mr. ADAMSON. You are a lawyer?

Mr. GOBER. I am not much of a United States lawyer.

Mr. ADAMSON. You are a lawyer as well as an authority on peaches.

Mr. STEVENS. Right on that same point, have you considered what that exclusive contract might be under the provisions of the so-called Sherman Act—restraint of trade?

Mr. GOBER. Yes; I understand the provisions of that. I understand the bearing of it. Of course, as I say, I don't like to talk about a thing that I do not know all about.

Mr. STEVENS. You would not like to give an opinion on that?

Mr. GOBER. No, sir.

Mr. ADAMSON. Suppose the exclusive contract is made after hearing from all of them and letting them all bid; what discrimination is there in that?

Mr. GOBER. None, sir. I will tell you something else. When we had competition there with these different refrigerating lines we have paid the same price to each one of them.

Mr. ADAMSON. What is the reason you can not say to Armour, "What terms are you going to give us;" and to the other companies, "What terms are you going to give us," and then whoever makes the best bid give the business to?

Mr. GOBER. We might do that and ask the railroads to give it to the lowest bidder; we might do that.

Mr. MANN. Is there any difference in principle between giving an exclusive contract for service guaranteed to be of a certain character and the railroad reserving exclusive authority to render that service itself?

Mr. GOBER. I do not see that there is. Why could it not get its cars from Armour, or Swift, or anyone else? What right would you have to go to them and say, "Here, you shall get these cars from so and so?" We might as well tell them that they shall buy their locomotives from some particular manufacturer or their cars from some particular manufacturer; I don't see any difference.

Mr. RYAN. But does not the railroad make these exclusive contracts in the first instance without consulting the shipper?

Mr. GOBER. As I say, I have been spoken to, but I do not know. I do not suppose they consult them all.

Mr. STEVENS. Do any other lines have offices there soliciting business?

Mr. GOBER. We have had; I don't think they had last year; but Swift and possibly one other company have had offices there. Armour & Co. has had so much superior service to Swift that the Armours have gotten the business. So far as I know, at our place there the people are satisfied with their service.

Mr. RYAN. Has the cost of the service increased since their competitors left the field?

Mr. GOBER. No, sir.

I tell you gentlemen the biggest job in this whole business is the ice. I was told what ice cost them; and I was told further that they did not make anything on 2,100 acres of peaches that they took out of north Georgia last year on account of the increased cost of ice. They could not get proper cars to haul it from Sandusky down there, and a great portion of it melted. It takes a strong company to properly attend to the needs of this business. When the Armour Company performs this work it is like a strong man doing the work; they can do it properly, and that is what we want.

Mr. MANN. In other words, the problem is to furnish ice in a country where ice does not grow in order to furnish peaches in a country where peaches do not grow.

Mr. GOBER. Yes, sir.

STATEMENT OF MR. J. D. HENDRICKSON.

Mr. STEVENS. Please state your full name and residence.

Mr. HENDRICKSON. J. D. Hendrickson, Philadelphia.

Mr. STEVENS. And what is your business?

Mr. HENDRICKSON. I came here, sir, as my friend Mr. Hale said, as a farmer, as a peach grower in Georgia.

Mr. STEVENS. What place?

Mr. HENDRICKSON. Leepope, Ga.

Mr. STEVENS. How long have you been in the business?

Mr. HENDRICKSON. I have been interested in the peach business since 1889, and have been interested in the growth of peaches since 1895.

Mr. STEVENS. Tell us what you know about the shipping of peaches, the use of railroad equipment and refrigerating-car lines and that sort of thing.

Mr. HENDRICKSON. Well, prior to 1898, and including that year, the business of refrigerating peaches seemed to be in the hands of several different companies. During the year 1898, when the crop reached about 3,000 acres, the business was opened to several different refrigerating companies, none of which were prepared to furnish the necessary equipment, either in cars or ice, and the interest suffered very materially. There were a great many carloads of peaches that went to waste that year. We could neither have cars nor ice; consequently they could not be transported to a northern market. I believe it is a well-established fact that peaches grown in the State of Georgia, in a commercial way, would be of no value to the grower except through proper refrigeration. From the failure to handle that crop of 1898 properly I believe the business passed almost exclusively into the hands of the Armour people or the Fruit Growers' Express Company, whose cars have been used largely, or almost entirely, over the district that I speak of, known as middle Georgia. Since the year 1898 I can say that we have had excellent service. During the last crop I handled something over 200 carloads of peaches, all of which were transported in the Fruit Growers' Express outfit, and I can say here, Mr. Chairman and gentlemen, that every car, without any exception, came to market in good condition; came to market with the bunkers more than three-fourths full of ice, I would say, showing that they had been iced and reiced properly. We make it a business. I have a party who examines carefully every car that is run into our markets, and that was the result of that, that they were all well iced, showing that they had been well iced in traffic. All came in good condition.

Therefore, personally, I have no trouble at all with the transportation company or the refrigerating company. I am like my friend Mr. Hale. I would like to see a little lower rate; I would like to see also lower minimums. Last year was an exceptionally good year, so far as weather conditions were concerned. While I admit that under such conditions as prevailed last year a good car will refrigerate 525 or 550 crates of peaches (that is the basis by which this rate is now made), under some

conditions of weather it has been clearly established that they do not carry them in good condition, especially that top tier referred to by Mr. Hale. I have had a good deal of experience with that top tier. I have found it necessary in a good many instances, and almost entirely during some seasons, to put a special mark on every crate of peaches that goes into the car on that top tier, and have instructions to have that tier taken off and piled in the depot where they are unloaded separately and sold separately, in order that we might make a satisfactory sale of the rest of the car, admitting that they should be in good condition, whether the top tier was or not.

Now, sometimes after making the sale of the four tiers we have been able to go on and sell the other tier at just the same rate, but if it happened to be bad we would not be able to do that. Therefore, as I say, we have found it necessary to mark off that tier. But last year was a good year. The weather was dry in middle Georgia; there were no storms, and the peaches were in good, healthy condition; and although all carried well with the minimum loading, I make it a point never to load above 539 crates, while I pay freight on 550 crates.

Mr. STEVENS. How have your prices and service compared now with the time prior to the adoption of the exclusive contract?

Mr. HENDRICKSON. Well, sir, in 1898 and during the period when the field, as I might say, was open to other than the Armour lines, we paid about \$80 a car for refrigeration, for refrigerator car service. Since the exclusive right has been given to the Fruit Growers' Express I believe we have been paying about \$68.75.

Mr. RYAN. Do you know whether or not Armour controls any of those other private refrigerating car lines?

Mr. HENDRICKSON. I do not know, sir; I never understood that he did—not at that time, at any rate.

Mr. STEVENS. Then, so far as you are concerned, you are satisfied with the present conditions here?

Mr. HENDRICKSON. Entirely so. I have had good service, and if I should continue growing peaches I am anxious for the best service I can get and the best rates possible, and I have been entirely satisfied with the treatment and the service that I have received at the hands of the gentlemen who have represented that company at Fort Valley.

Now, our loading station is 6 miles from Fort Valley, located on the Southern Railway. The Southern Railway Company last year gave us all the facilities that we asked for in regard to moving cars. Mr. Floyd, the representative of the Armour people, who has been stationed a number of years at Fort Valley, and who I believe has had charge of icing and the distribution of the cars, has always been very ready and willing to respond to our telephone calls for a car almost any hour in the day we wanted it, properly iced. So, as I have said before, we have been able to load all of our cars and transport them in good condition.

Mr. RYAN. You are engaged entirely as a grower of peaches now?

Mr. HENDRICKSON. No, sir; my business is a commission merchant in Philadelphia as well as growing peaches in the summer season in Georgia.

Mr. RYAN. Complaint has been made that the commission business has been somewhat interfered with by the operation of the Armour refrigerator cars. What do you know about that?

Mr. HENDRICKSON. That must apply to territories I am not familiar

with. My business as commission merchant has not dealt to any extent with refrigerator-car service except in Georgia, and some business in South Carolina and Florida. We have had some business there which has always been well taken care of, and I believe at a minimum cost. So, from the position of commission merchant I have no special grievance, and certainly from the point of a peach grower I am entirely satisfied with the treatment I have received at their hands. And, further, I believe that with the business as it now is, and with the extension it is undergoing, we could not manage it unless we have equipment furnished by a large company. It would be perfectly agreeable to me to have the railroads furnish this equipment whenever they are prepared to do it. I do not believe that there is a railroad that would reach us in the South that to-day could give us the accommodations that the business demands.

Mr. RYAN. You do not want any change in the conditions that would impair any of this service you now have?

Mr. HENDRICKSON. I do not.

Mr. RYAN. And you do not want to take a chance on that?

Mr. HENDRICKSON. One of the reasons suggested by my friend at the end of the table, suggested to my friend Judge Gober, was that he wanted the business during his lifetime, and I am a little bit the same way. I believe in the trees I am growing and the peaches that mature in my time. I want to see those peaches transported, and if we speculate around too much for companies to do it I am afraid we will get left. The service we have had has been satisfactory.

I thank you, Mr. Chairman and gentlemen, for your attention.

STATEMENT OF MR. E. J. WILLINGHAM, OF MACON, GA.

Mr. Chairman and gentlemen, I am in the manufacturing business and in the fruit business. The reason I appear before you is to look after my interests in the fruit business, not for the Armour car lines, but I am here to look out for my own interests as a fruit grower.

I have three orchards—I suppose you would like to know these facts, and any questions as I go along I will be glad to answer. I have three orchards located just below Macon, 20 miles and 35 miles and 55 miles, about 20 miles apart. They are all on the Central of Georgia Railroad, just below Macon. I have about 155,000 trees in the three places. Under favorable conditions I expect to ship 75 or 100 cars of fruit this year. I have about 100,000 young trees just coming in bearing; but from this season on, with favorable conditions, I ought to ship from 150 to 200 cars a year. On two of my places I have good side tracks where I can have the cars run in, and in that way load without injuring the fruit or any trouble, and at the third place I expect to have one put in later. I understand that the Central of Georgia has been making a contract with the Armour people since 1898. Before that, I understand, it was open to all lines. That was before I went in the business. I found, though, that it was not at all satisfactory with the grower. I came into the business seven or eight years ago, and I have been dealing with Armour through the Central of Georgia ever since then. Before they made a contract with the Central of Georgia I had a special agreement with them, and they were short one day one or two cars and they sent down their agent, a very efficient man, very promptly, and they settled the claim without any trouble.

Since then I have just got the bills of lading from the Central of Georgia.

Mr. ADAMSON. Since that time you have not dealt with that company?

Mr. WILLINGHAM. No, sir; I have dealt with the Central of Georgia. They have had a contract ever since then and I have been dealing directly with them.

One of the great advantages in having this company is that they are able to furnish what cars we need. They are strong. They have icing stations at Fort Valley and Marshallville, both in a short distance of my orchard. Of course they have to go to the expense of having these houses filled with ice. At the last minute if they find that there is no fruit crop they, as well as the grower, suffer very much. But we must deal with somebody who is able to go ahead and take these risks and park these cars. If we do not, we can not wait until the last minute, because it is too late. I understand that from some of the other growers when the other lines were giving the service it was very unsatisfactory; that the cars were "bum" and that there was a good deal of loss and dissatisfaction.

I have never had a dollar's interest in any car line. I did have once, but I lost every cent and have never had any more stock in any of those companies. I am simply speaking as a peach grower.

Prior to 1898 our rate was \$90 a car, but from that time until about two years ago it was \$80 a car, and since then, for one or two seasons, it has been \$68.75.

Mr. ADAMSON. You are a peach grower, and neither a car owner nor a broker?

Mr. WILLINGHAM. I am a manufacturer and a fruit grower.

Mr. ADAMSON. So far as your connection with the peach interest is concerned it is producing peaches, is it not?

Mr. WILLINGHAM. Yes, sir; that is all.

Mr. ADAMSON. It appears from the statement of you gentlemen here that the Georgia fruit growers are not raising any rumpus about doing anything to the fruit car lines?

Mr. WILLINGHAM. Personally it does not make any difference to me who hauls the fruit, but I think with the light before me that we had better let well enough alone until you can legislate to give us something better.

Mr. ADAMSON. You think that the Georgia peach growers, so far as you have observed, are well satisfied?

Mr. WILLINGHAM. Yes, sir; I think so. I know I am.

Mr. RYAN. Except that top tier regulation?

Mr. WILLINGHAM. I was going to remark in a minute on the top tier question; we have put in 22,500, I think, as a minimum. The top tier does not carry so well as a rule. We have that grievance.

Mr. ADAMSON. The top part of it is not so well preserved?

Mr. WILLINGHAM. No, sir. But the main grievance to my mind is a question that has not been brought up yet.

Mr. ADAMSON. What is that?

Mr. WILLINGHAM. The delays that are occasioned all along the line by the Pennsylvania Railroad and other lines that take our fruit, and the absolute impossibility of recovering one cent from those roads. If you want to do something, reach that. I have had a suit against the Pennsylvania Railroad Company for some years, and I have been

on their docks there in New York and in their private offices, and I can not get a penny from them.

Mr. ADAMSON. Then you think the only legislation that is needed in reference to private-car lines is to require all railroads to expedite these cars wherever they take them?

Mr. WILLINGHAM. I do not know that I quite catch your point.

Mr. ADAMSON. You think the main need in regard to these cars is to force all railroads to take them and shove them on?

Mr. WILLINGHAM. I think the main thing is to make them all do as well as the Armour company is doing.

Mr. RYAN. Is the service of the initial road in Georgia satisfactory?

Mr. WILLINGHAM. I think so; the service of the Central of Georgia. I think, is satisfactory. It is after it gets to Alexandria, or somewhere in this country, that it is unsatisfactory. I know I keep my representative in New York the entire fruit season, about six weeks, so I can keep in touch with the market every morning. In that way I am kept posted, and I know absolutely the condition of every car that goes in. Every year I have a man who is there on the dock every night at 1 o'clock, when the bell is tapped, and watches things. In that way it enables me to know the condition in which that fruit is received; and he also knows how the bunkers are in those cars. Now, if there is any kick, if there is any trouble, I would certainly know something about it through my representative. He represents me solely, and I keep up with it in that way.

I would like to mention here that we have to pay a good deal more freight from our section than they have to pay from the West to New York. We all know that as producers. It is a fact. We have not been able to get the rate as low. Why that is, I can not tell. The fact is that if we do not get lower rates with the increased carriage coming on I do not see how we can produce the stuff and sell it.

Mr. RYAN. That is, you refer to the competition with Michigan for the New York market?

Mr. WILLINGHAM. No, sir; I mean the rates they get from the West to the East are lower than we get from the South to the East.

Mr. STEVENS. You mean the railroad freight rates?

Mr. WILLINGHAM. Yes.

Mr. STEVENS. Or the refrigerating rate?

(No answer.)

Mr. ADAMSON. Is not that due to there being a large number of competing lines?

Mr. WILLINGHAM. I do not know why it is, but it is a fact. It works a great hardship on us, I know.

Mr. ADAMSON. And our peaches are so fine that they have to put a handicap on them, you know.

Mr. WILLINGHAM. That is the only way we can do—by giving them better quality.

If there are any other questions I would be glad to answer them.

There is one point that has been brought out, and that is in regard to the freight being taken out, the commissions, etc. I will state this: That the commissions and freights are always taken out at the other end and deducted from account of sales.

Mr. STEVENS. When you have any complaint for damages you go to the railroads, do you?

Mr. WILLINGHAM. I do not; yes, sir. The first year, as I remarked,

I had a contract with the Armour people and they promptly paid the damage done to one or two cars. Since then the Central of Georgia has made the contract with the Armour Company.

Mr. STEVENS. And you deal entirely with the Central of Georgia Railroad?

Mr. WILLINGHAM. I take their receipts, and that is all.

Mr. RYAN. And you have no complaint to make about the refrigeration or the refrigerating car system?

Mr. WILLINGHAM. None whatever. It suits me well at present, except in the respects I have mentioned.

Mr. RYAN. Except the minimum rate?

Mr. WILLINGHAM. The two points I have made, and the higher rates we have to pay as compared with western rates. I think it would be hazardous now to undertake any legislation. Armour is nothing to me any more than any other car lines, but suppose you would legislate against them and Armour would decide: "Well, we do not care to compete for this business this year." As Mr. Gober said, we will probably ship from 6,000 to 8,000 cars this year, and if Armour should say that they did not care to compete for the business, if they thought they had not been treated just right and would not go in to get the business, pray tell me where we will get the cars. How would we be able to move the crop? It would cost us thousands of dollars apiece as growers to get that crop to market.

Mr. STEVENS. I suppose it is understood that all these gentlemen appear at the request of the Armour people, to testify as to these facts.

Mr. ADAMSON. Is that true—did you appear at the request of the Armour people?

Mr. WILLINGHAM. They asked me to come, sir, as a fruit grower.

Mr. ADAMSON. I ask you whether you came at the request of the Armour people?

Mr. WILLINGHAM. Mr. Fleming, when he was in Macon some weeks ago, asked me to come.

Mr. ADAMSON. He is one of the Armour people?

Mr. WILLINGHAM. Yes.

Mr. ADAMSON. You see we have no dearth of people here representing car companies or the brokers. They have been here, and I telegraphed to Georgia to get some of the horny-handed sons of toil to come here. I telegraphed to Fort Valley to get some of you peach growers to come, and if possible I said I would rather that Armour & Co. would not pick them.

Mr. WILLINGHAM. I have no interest directly or indirectly in the Armour Company and I did my best to get out of coming here, and I asked Mr. Flemming to get Mr. S. H. Rumph or Mr. Withoft or Mr. Wright.

Mr. RYAN. Do you think you gentlemen fairly express the feeling among the peach growers of Georgia generally?

Mr. WILLINGHAM. I made some inquiry in order to answer that question in case it should be asked me, and I am satisfied from the way they spoke to me that they are satisfied with the service the Armours have given us.

Mr. STEVENS. Whose sentiments would be represented in that way?

Mr. WILLINGHAM. The different growers, sir. We have probably four or five large growers right there in Macon that have interests outside, like I have.

Mr. STEVENS. How many small growers?

Mr. WILLINGHAM. In Macon?

Mr. STEVENS. In and about Macon.

Mr. WILLINGHAM. I don't suppose there are over half a dozen growers around Macon, but most of them are quite large owners.

Mr. STEVENS. Is there any difference in the treatment of large and small growers?

Mr. WILLINGHAM. I don't think so.

Mr. STEVENS. All get the same treatment?

Mr. WILLINGHAM. Yes.

Mr. STEVENS. The same rate?

Mr. WILLINGHAM. Yes; I think so.

Mr. STEVENS. The same character of service?

Mr. WILLINGHAM. I think so.

Thereupon, at 12.40 o'clock, the subcommittee adjourned.

WASHINGTON, D. C., *February 13, 1905.*

The subcommittee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

**STATEMENT OF MR. GEORGE B. ROBBINS, PRESIDENT OF THE
ARMOUR CAR LINES, AND DIRECTOR FOR ARMOUR & CO.—
Continued.**

Mr. ROBBINS. Shall I proceed, Mr. Chairman?

Mr. STEVENS. There are some questions which we desire to ask, but you better finish your statement, whatever you may desire to say, first, and then we will proceed to ask you questions.

Mr. ROBBINS. I will resume my statement where I left off the other day and take up some statements made before this committee by Mr. Ferguson, who I believe is the organizer of numerous associations. I will ignore most of them—of what might have happened under certain remote contingencies and his guess at earnings—feeling that such statements have no effect upon this committee, but I will endeavor to answer in detail one of each kind of his definite statements to illustrate many of a similar nature made by him.

He states that the shippers make their claims on account of refrigeration to the railways, and that Mr. Patriarch testified that they amount to practically nothing. Later in the statement Mr. Stevens asked Mr. Ferguson the question, "Do not the private car companies now hold themselves responsible to make a sort of insurance against loss or damage on account of lack of refrigeration or insufficient service?" Mr. Ferguson answered: "No, they do not; and I do not think there is any law that would hold the car company responsible for lack of sufficient number of cars or proper service."

The fact is that shippers in nearly all cases make such claims against us and we settle therefor direct with them on their merits and without the knowledge of the railways, and it is nothing to the point that Mr. Patriarch does not know of such claims, of which a number have been settled in connection with the Michigan business. To further emphasize this point I desire to say that we settled claims in California one season to the extent of over \$6,000 because of temporary shortage of cars under our contract, and a like amount was paid to Georgia shippers one season for similar reasons.

The fact is, therefore, that we obligate ourselves to actually furnish all the cars required under exclusive contracts and hold ourselves responsible for damage in case of failure to do so, and we also pay damage for faulty equipment or faulty refrigeration.

The exclusive contracts also, as a rule, specifically provide that the car line indemnify the railroad against losses arising from claims owing to shortage of cars, condition of cars, to bad refrigeration, or failure to furnish sufficient ice, or proper icing, or refrigeration in transit, and therefore the shipper has double protection, the obligation of the car line, and the right to fall back on the railroad itself on account of the car line, if there is any greater legal hold on the railroad than on the car line itself.

In support of this I quote from paragraph 7 of the Pere Marquette contract referred to by Mr. Ferguson:

The car line agrees to assume all liability for, and promptly adjust and pay and indemnify and save the Pere Marquette harmless from claims arising from any failure on its part to properly ice and keep iced said refrigerator cars furnished and supplied by it as aforesaid to the Pere Marquette.

He stated further that the icing is done by the railroad companies and that shipments are under the entire care and supervision of the common old-fashioned railroad company; that the car line company simply instructed the railway station agents to note on billing "Reice when necessary;" or to instruct to reice at certain points, and they obey instructions. The fact is we furnish the ice from our own supply in nearly all cases. At many important points the railroad does not furnish us ice, but we furnish all our own supply, and sell the ice to the railroad, besides, for their use. We supply every pound of ice used in California, Georgia, the Carolinas, and Florida, and many other of the largest shipping districts; and from Georgia, Florida, and the Carolinas to New York, Boston, and so forth; for example, we supply, besides the initial ice, every pound of ice used en route from our own stations, with our own labor, superintended by our own salaried men.

We have an 18,000-ton icehouse at Toledo on the Lake Shore, and an equally large one at Columbus on the Pennsylvania Line. We have icing stations of our own at Buffalo, Albany, Altoona, East St. Louis, and probably 50 other points. We do sometimes buy ice from the roads at certain points where a small quantity is needed, and when it is obtainable from them cheaper than we could supply it ourselves.

Great stress is laid on a clause in our Pere Marquette contract for such ice as they can spare at certain points at \$2 per ton. This is at a few points where the ice is cut, and where they can spare it from their storage, but it comprises only a small fraction of that supplied by us for their business, the balance coming from various points wherever obtainable to the best advantage.

In regard to his claim of our service not widening the market for Michigan peaches, or a better service being given than formerly, I have only to refer to the evidence read by me in connection with Mr. Mead's statement of five of the principal Michigan shippers, one of which being very brief, I will read it again to refresh your memory on this point. This is from the testimony of Mr. McCarthy:

I have been in business there about forty years and have been a peach shipper, and of course we have had lots of trouble shipping peaches and getting them shipped to a distance. We had to ship them locally a great deal and met with loss. Since the

Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them.

Commissioner PROUTY. Did you pay the full charge?

Mr. McCARTHY. Yes, sir; from \$35 to \$50. It paid me to do it.

Mr. Ferguson figures out in detail why it would pay the roads to own their own refrigerators. I have found that the railway men figure out their own interests with a sharp pencil, and consider that it is for them to determine whether it is for their best interests to buy cars or rent them.

He makes numerous references to the freight rates on fruit, beef, and so forth, which have no bearing on car-line matters.

Mr. Patriarch, of the Pere Marquette, according to Mr. Ferguson, testifies that his company could not safely undertake to handle the fruit business originating from their lines with less than 2,500 to 3,000 refrigerators. The total average crop is from 6,000 to 8,000 cars, and the part to be refrigerated is an unknown quantity, dependent upon the weather conditions, volume of crop in the East, and so forth. Mr. Ferguson figures out on paper that 500 cars would answer. I leave it for the committee to decide whether the Michigan growers should be dependent upon the knowledge of the Michigan railway officials or the figures of the Duluth commission man.

He states that the various railways like the Chicago, St. Paul, Minneapolis and Omaha, Wisconsin Central, and others preferred to furnish cars for the Michigan business. I beg to repeat briefly the testimony of Mr. Rowley, the general freight agent, Michigan Central Railroad, on the subject:

Mr. DECKER. You used largely the M. D. T. cars on your line prior to the Armour Car Line contract for this fruit, did you not?

Mr. ROWLEY. No, sir; only to a small degree.

Mr. DECKER. What cars did you use?

Mr. ROWLEY. Such cars as we could get from connecting lines.

Mr. DECKER. Was your greatest trouble in securing cars for the fruit business as to those going to eastern points, like Boston and New York?

Mr. ROWLEY. No, sir; the difficulty did not seem to be confined to any one direction. There was trouble at all times, in all directions.

Commissioner PROUTY. Your judgment is that without a contract with the Armour company, as you are situated to-day, you would have difficulty in supplying the Michigan shippers?

Mr. ROWLEY. We consider it would be impossible.

Even if these roads were willing to supply some cars none of them were willing to agree to furnish all the cars required, even for business by their own line, and they would not consent to the cars being routed over other roads. The cars they proposed to furnish were admittedly not suitable for the peach business, and the roads would not guarantee their refrigerating qualities. If each connecting road tried to furnish its own cars, endless confusion would result in trying to get to each shipper at each of the scores of stations the kind of car wanted for a certain destination over a certain road. The fruit is frequently loaded before its destination or route is decided, and our cars are free to go to any destination by any route, thus saving the railways and shippers great trouble in getting certain kind of cars for certain business and providing a great convenience and advantage by permitting change in destination and route after loading.

Mr. Ferguson states as follows: "Now as to whether or not the carriers would furnish refrigerator cars. Many of them are doing so,

notably the Chicago, Milwaukee and St. Paul, the Chicago and Northwestern," and others. I desire to state that these roads are not examples at all of the conditions on the roads with whom we do business and make exclusive contracts. These roads do not originate fruit or berry business in any quantities or any other kind of business which we seek to handle, and we have never sought a contract with them. These railways supply refrigerators for certain year around business, such as dairy traffic, and they have no particular need of any large number of special fruit refrigerators for a short period.

Mr. Ferguson states that if it be economical to the carriers (to rent cars), the public certainly derives no benefit, because instantly upon the execution of these exclusive contracts refrigeration charges are increased from 300 to 500 per cent. The facts are that under these exclusive contracts our refrigeration charges have never been advanced, but have frequently been reduced, and our agreements with the roads do not permit any advance in our charges. He seeks to convey the impression that the advance on the Michigan refrigerator charge was chargeable to us when an exclusive contract was made. This point is somewhat emphasized as showing that we advance our rates, and it being the only case of the kind quoted, I take the liberty of repeating my answer to a similar impression created by Mr. Mead.

In 1900 we handled Michigan peaches to some extent, and our rates to Duluth were, I believe, \$15. Under the railroad rule or classification previously in effect the railways paid us for or absorbed the cost of the ice used for refrigeration, and our rates were based on this condition. In 1903 the railways changed this rule and discontinued absorbing the cost of the ice. We had nothing whatever to do with this change in rule, and our profits were not increased by the increased charge for refrigeration over the previous abnormally low one. The matter of change in this rule is one of classification or freight rates, and entirely between the roads and the shippers, and the same is not chargeable to the car lines in any way. The following is an extract of the testimony of Mr. Patriarch, traffic manager, Pere Marquette railroad, to the Interstate Commerce meeting held in Chicago in June, 1904, covering this matter:

Mr. URION. During 1901 the Armour Car Line was not on your line of road, was it?

Mr. PATRIARCH. We had miscellaneous refrigerators that year.

Mr. URION. During that year you made no charge for ice, is that correct?

Mr. PATRIARCH. That is correct.

Mr. URION. You commenced making a charge for ice, did you, prior to the making of the contract in question with the Armour Car Line?

Mr. PATRIARCH. We started in 1902 making a charge for ice regardless of the contract with the Armour Company.

Mr. URION. Then the making of the contract with the Armour Line had nothing to do with your furnishing ice free?

Mr. PATRIARCH. No, sir; it had not.

Mr. URION. There was doubtless some reason for your discontinuing to furnish ice free, was there not?

Mr. PATRIARCH. There was a good reason.

Mr. URION. What was the reason?

Mr. PATRIARCH. The cost and labor of icing made such inroads into the revenue that the railroad companies obtained, they were forced to go out of bearing that burden.

I would like to say, Mr. Chairman, in that connection, that that rule, at one time in force in Michigan, is the only case that I know of where the ice was ever furnished free by the initial road at any time. It is a practice that stands alone, and of course is referred to in one

way and another, and back and forth, as being a thing that we had something to do with. But we absolutely had nothing to do with that in any form whatever.

Mr. Ferguson states that the private car line practices for a long time were confined to the California roads, and it is probably true that the California roads and shippers have had the longest and most experience in this subject. I therefore quote from the report of the Sacramento Chamber of Commerce on this subject, made in 1903, after a lengthy and thorough investigation of the subject.

The history of the transportation of deciduous fruits to eastern markets records in its earlier days repeated failures, and at the inception the cost was so great as to make the general use of refrigerator cars practically prohibitive. These rates were gradually reduced until, in 1893, the tariff of \$175 was established as the rate from Sacramento to New York on 24,000 pounds, the rates to other places being in proportion. At this time there were five refrigerator car lines operating in California, and all testimony available shows that no year passed but that there was a shortage of cars at some time during the season, occasioning thereby considerable loss to the grower. In the incessant commercial warfare carried on between these five refrigerator companies in their efforts to secure business large rebates on the refrigeration charges were made to the larger growers and shippers as an inducement for such grower or shipper to use some particular refrigerator car line. This was positively objectionable, being a gross discrimination against the smaller grower, and having a demoralizing influence in the fruit-shipping business.

The division of this fruit-shipping business between these five companies did not justify any one of them in erecting the extensive plants and putting into operation such a complete system for the refrigeration and care of green deciduous fruit while in transit as is necessary and as is now in operation throughout the United States. Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company giving the car line the exclusive privilege of operating in California, in return for which the car line obligated itself, at all times, to provide sufficient number of refrigerator and ventilator cars to all shippers on equal terms. The rate was reduced by the Armour car line from \$175 to \$100 from Sacramento to New York on 26,000 pounds, and the rates to other places proportionately decreased.

Thus it will be seen that the grower and shipper of California tried for many years to secure refrigerator cars for the transportation of their products to the East, having several sources of supply to draw from, and frequently found the same inadequate to meet their wants when needed. Moreover, the service was often not to be relied upon owing to the fact that no one of the companies at that time had the necessary equipment to insure the best service, but since only one car line has been operating in California there has never been a time when there was not an adequate supply of refrigerator cars at the disposal of the grower and shipper of deciduous fruits, so that it would seem to be unwise for the fruit interests of California to desire a return to the old system. The only other means by which the fresh deciduous fruit of California could be marketed would be for the carrier—the Southern Pacific Company—to construct its own refrigerator cars, and a moment's reflection will show the impracticability of this scheme, for it would require an investment of upward of \$5,000,000 on the part of the railroad company to furnish the necessary equipment to move the vast amount of California fruit, and for a good part of the year a considerable portion of the cars would lie idle on side tracks, because of the disparity between the volume of deciduous fruit shipments during the summer months and that of the citrous fruits during the winter months, as well as lack of freight during the intervening months between the two seasons, when the movement of fruit is exceedingly limited in quantity.

The construction of such a refrigerator equipment would require several years to complete, and when completed it is questionable whether such an equipment would compare favorably with the cars now handling this business, inasmuch as the cars now owned and used by the Armour Car Line Company are the result of many years' experience in the refrigerator business and are covered by many patents, and the use of such other cars would not give the grower and shipper the full assurance that these cars had not, between seasons, been put to uses which would be very detrimental to the car again being used for fruit shipping. Such an investment would not recommend itself to a business man, and the maintenance of such an equipment would impose an additional tax on the fruit industry not warranted by the circumstances.

The equipment necessary to handle this vast business, amounting approximately to 30,000 cars of fresh fruit, seemingly can best be obtained from a single car-line company, which has the ability to find use for such equipment every month in the year somewhere in the United States, Canada, or Mexico, thereby lessening the cost to the California grower, by reason of the fact that the earning capacity of the car is not diminished when California fruit loads are not available, and which insures better cars, used for fruit-shipping purposes only, better refrigeration, and more constant care than can be had where numerous car lines are operating in the same territory. So far as this committee can ascertain, no method obtains at present whereby safe and effective refrigeration in a large way, as required by California, can be had, except through some large system having its ramifications throughout the United States and Canada, and the Southern Pacific Company seemingly acted in the interest of the fruit grower as well as their own in making this contract with the Armour car line.

A slight digression at this point as to what refrigeration is, means, and how it is accomplished would not seem amiss. The car, before it is loaded after its long, hot, and dry trip westward, is cooled before being reloaded by having its ice tanks filled with ice. This ice rapidly melts, and must be taken into consideration as a part of the cost of the service. After the car is loaded the tanks are again filled. Contrary to the commonly conceived idea, this is not sufficient to keep the fruit in good condition until its long journey of often 3,000 miles or more, and lasting from twelve to twenty days, is ended, but has to be replenished from time to time as is needed, according to the state of the weather, nature of the fruit, and the time consumed. This necessitates the erection of ice houses and loading plants and the storing of vast quantities of ice all over the United States. The erection of these large icing plants and the conservation of the vast quantities of ice needed for this work by several companies would mean a duplication of plants and an expenditure that good business judgment would not dictate, owing to the problematic nature of the business to be done and the ice to be consumed, whereas with one company it becomes a more simple matter to estimate the necessary number of tons of ice and the cost of such work, knowing to a very close approximation the number of cars each season to be shipped.

Therefore, in the judgment of your committee, better and cheaper refrigeration can be obtained by the fruit growers and shippers of California when operating with one line, where they are sure of first-class service and constant care of their fruit from the time it leaves California until it arrives at its destination, than they could by trusting to several refrigerator companies, no one of which could afford to provide as ample an equipment and equal service.

Your committee has examined the original contract between the Southern Pacific Company and the Armour Car Line, and has carefully considered the terms thereof. This contract is a plain business instrument, which was in the interest of the Southern Pacific Company to make, because it fixes the responsibility in the event of a failure to furnish cars to the shipper when needed, and it is in the interest of the grower, because, so far as we are able to determine, it absolutely guarantees to the grower and shipper an adequate supply of ventilator and refrigerator cars whenever needed to handle their products.

The Armour Car Line has not controlled and does not and can not control the routing of a single carload by reason of their contract with the Southern Pacific Company. On the other hand, it is well known that the shipper of deciduous fruit routes his own cars, and the Armour Car Line under this contract is obligated to give every shipper proper and effective refrigeration upon equal terms, and there is absolutely nothing in the contract that could in any manner be construed as giving the car line any control over the transportation, destination, or distribution of the fruit, which they must care for and properly refrigerate whatever its destination may be or to whoever it is consigned.

That this contract is viewed as beneficial to the fruit interests of California is evidenced by the fact that the consignors of 86.47 per cent of all the fresh deciduous fruit shipped from California during the season of 1902, in a letter to the Southern Pacific Company under date of November 12, 1902, expressed themselves as follows:

"We, noting that your company has recently closed a three-year contract for the use of Armour cars for fruit shipments from California, desire to express our gratification that these carriers have decided not to make any new experiments in the refrigeration of deciduous fruits—the most perishable freight known. We feel satisfied that change of management and method in relation to refrigeration would be likely to entail serious loss on growers and shippers until the details of the operation were perfected in the course of time by the new owners, and no demand for change

which necessarily involves these chances comes from the large body of shippers most interested in the industry.

"The efficiency of the present refrigeration service has been tried and tested and found satisfactory, and we feel our interests are best served by a continuance of your present relations with the Armour Car Lines."

Mr. STEVENS. Is that from the report of the Commission?

Mr. ROBBINS. That is the report of the committee from the Sacramento Chamber of Commerce. Sacramento, as you perhaps understand, is the center of the fruit-shipping district of northern California. The question had been agitated and argued in the transportation committee of the growers and finally was referred to the Sacramento Chamber of Commerce as being an outside and disinterested party and body.

Mr. STEVENS. The transportation committee of whom—of the shippers?

Mr. ROBBINS. Of the shippers. They did not come to their own conclusions about it, but, instead of studying the matter themselves, they decided in the abstract to leave it to an outside disinterested party, and the result was the reference to this committee of the Sacramento Chamber of Commerce, who, if I remember rightly, spent some six months investigating the subject and, after that time, made this report from which I have just read you this extract.

Mr. STEVENS. When did that occur?

Mr. ROBBINS. In 1903, which was the date of the renewal of our present contract with the Southern Pacific. The investigation commenced before this renewal and was not finally finished until after it; but it was well known by the railroad company how the shippers stood on the subject and, as shown here, the shippers, before the contract was renewed, signed this suggestion that the methods then in force, the exclusive arrangement with us, was desired by them to be continued. I want to dwell on that particularly, because it is the oldest and largest fruit-shipping district in the country, and the most difficult business to handle from the fact that it has the longest distance to ship, as has already been stated. I think the cars are out from twelve to twenty days on the road.

Mr. Ferguson states that the right of routing is arbitrarily taken away from the shipper, all of which is finally chargeable to the private car-line system, and referring to some lengthy correspondence with the 'Frisco system. Later he admits, in his own statements, that the 'Frisco road could not have known what roads would perform the service of concentration at Kansas City or St. Louis of the Armour cars, and I can not compromise the two statements. The fact is that our cars are absolutely free to be used from points on any and all roads with whom we have contracts to any destination by any route, and some of the contracts have clauses to this effect. The routing lies entirely between the shippers and the railways, and we have nothing to do with it, and any effort to connect us with it is wholly unwarranted.

In reply to a direct question from Mr. Ryan, "Do the Armour car lines ship fruits?" Mr. Ferguson replied, "Yes, sir." I have previously stated at some length that the Armour car lines never have dealt in or shipped a package of fruit directly or indirectly. Armour & Co. or any other Armour interests never have dealt in fruits, with the following qualifications:

One season, as previously explained at length in my testimony, Armour & Co. handled between 150 and 200 cars of fruit on consign-

ment, particularly from California, at the particular request of the growers, to help market an oversupply of fruit they had on hand at the time and could not dispose of. While I admit that this may have injured the commission men to the extent of their commissions, it benefited the growers probably a hundred times as much. Armour & Co., previous to May, 1904, did deal in and handle produce to a limited extent, such as apples, potatoes, beans, etc., which commodities are not refrigerated, and as a rule were not even shipped in Armour equipment. This business was handled strictly on its own merits, the same as if Armour Car Lines had no cars, and the produce department of Armour & Co. have dropped the handling of produce, except such beans, tomatoes, apples, etc., as they may need for their own business, for putting up beans with tomato sauce, making mince-meat, etc., to which practice even a commission man can not object.

Mr. Ferguson, in reply to a question from Mr. Stevens, stated that we had some good cars, but that our line as a whole is not equal to some other lines; that there are many refrigerator cars in existence and use to-day that were built eight or ten years ago that have to a certain extent become obsolete, but are still in use; and the inference being that without competition, or under exclusive contracts, the most modern cars are not furnished. The fact is that we have no cars in service for refrigerating shipments of fruit and berries, etc., needing high-class equipment, over about 6 years old. The older cars have been retired, not because they were worn-out or unfit for business from any physical standpoint, but because newer and better cars have been introduced, in which matter we have taken the lead. As a practical car man, who has given the question of refrigerator-car construction first attention for a great many years, having supervised the designing and building of over 10,000 refrigerator cars during the last ten years, I can say that we construct the best cars that can be built, and at a greater cost than any others running. We build these cars at our own shops, to a large extent, and watch every detail with the utmost care. We are in a better position to keep furnishing new and modern cars than anyone else, because as the cars begin to get old we retire them from the fruit business, and after rebuilding them somewhat use them in our cured-meat or provision business, and later on in our ice business.

Much has been charged against us in this hearing with respect to the business originating on the Pere Marquette Railroad, almost as if that line were operated in our interests.

That business has naturally been selected for attack because it is most open to attack from their standpoint and the hardest to defend from ours.

The Michigan peach business matures late in the season, in a northern latitude, during September and October, when the weather is comparatively cool. Of the crop, amounting to some 6,000 to 8,000 cars, only one-fourth to one-third is refrigerated, the balance moving to comparatively nearby points, such as Chicago, Milwaukee, Indianapolis, Detroit, etc., indicating that any refrigeration at all is not necessary, and less perfect refrigeration is required than from any other fruit-producing section.

Situated as this business is, in a cool climate, where ice forms in the winter and is sometimes cut by certain growers, we made no effort to take care of the business until a few years ago, when some of the

Michigan growers and railways who knew of our plan of operations elsewhere came to us for equipment and service on their line, because of the difficulties before experienced by them. We were somewhat in doubt about undertaking the business, and finally made an arrangement for one or two years for part of the business in question—Grand Rapids, for instance, being at first excepted.

Later the service and conditions where we operated proved so satisfactory to the railway and the shippers most interested that the Pere Marquette extended the arrangement to cover Grand Rapids and all competitive business, and the other Grand Rapids lines followed the same plan and all the business was tendered to us because of the merit of our service. It must be plain to this committee that such roads as the Michigan Central, Grand Trunk, Pere Marquette, Grand Rapids and Indiana, and Lake Shore, and other Michigan roads do not turn their peach business over to us to refrigerate, one after another, gradually, unless our plan of operation is reasonable and meritorious and for the best interests of and with the sanction of the growers most concerned.

This Michigan peach business is less than 4 or 5 per cent of our total fruit and berry shipments, and the complaints on other business are not only conspicuous by their absence, but you have heard decided approval by the largest growers in the country.

The question of exclusive contracts has been mentioned in a great many different connections. I desire to explain for the benefit of the committee that same are not entered into by the railroads without careful consideration of the same and consultation with the majority of the influential growers. In some cases, in fact, an organization of shippers have negotiated with the various car lines direct and taken bids from them for supplying refrigeration, and after deciding on terms have requested the railroads to make an exclusive contract with the car line selected. The use of such cars and their refrigeration is therefore not forced on the shippers without their knowledge or consent, as has been intimated, but the exclusive contracts are made after consultation with the various interests most affected. This is plainly shown from the statements of the growers who recently appeared before this committee and from the statement of the Sacramento Chamber of Commerce, of which I have given an extract. Mr. Mather, in his statement, said in effect that he did not consider exclusive contracts necessary or advisable; also that he did not have to solicit business for his stock cars, but that they had applications for all the cars they could furnish. The refrigerator-car business is radically different for the reason that not only cars must be supplied, but a large amount of ice accumulated in advance, which sometimes requires six or eight months, and it is simply not a business proposition to expect any refrigerator line to agree to furnish ice and refrigeration and prepare for same without some definite assurance that their cars and ice will be used when the business moves.

I would like to say in that connection, as I previously explained, what great difficulties we had last year in Georgia. We bought all the ice in Georgia and Tennessee, and the whole South, and finally had to ship 400 carloads of ice from Lake Erie. Another season they are estimating that the crop will be from 6,000 to 8,000 cars, as compared with 5,000 cars shipped last year, and to meet the demand for these shipments, to meet these conditions, we have induced certain people

to build a new large ice plant at Chattanooga, and in order to induce them to do so we had to make a five-year contract with them. I mention that to show the utter impracticability of leaving the question open of who is to handle the business until it moves; to show you how necessary it is that it must be arranged for, not only one year in advance, but sometimes for several years in advance, to supply ice and to acquire the necessary equipment. The importance of the ice supply, I think, is frequently overlooked. It is sometimes even more difficult to get the ice than it is to get the cars, and at times after we have gotten the ice in store it is not used. On three different occasions last year we had our houses burned and had to ship ice in there from other places. What is known as the San Pedro road, Senator Clark's road, is now building from Salt Lake City to Los Angeles, and is to be finished some time during the season, nobody knows just when. They tendered us a contract, and we made an exclusive contract with them for three years, and we are now building out in the desert an ice house and manufacturing plant that will cost us \$75,000. I do not know whether we will have a single car over that road this year or not.

Section 5 of the Stevens bill may be construed as fixing the rentals for the use of refrigerator cars or, if the railroads may desire to so construe it, makes it mandatory on them to pay only a certain rental at the present rate paid by one railroad to another for the use of cars, which is 20 cents per car per day. There is no distinction made between flat, coal, box, and refrigerator cars. All are on the same basis. The reason is that this is merely an arbitrary rental or per diem fixed between the railroads on a reciprocal basis for settlement of balances in the interchange of cars, so that at the end of certain periods they may strike a balance with the other roads as to the number of cars interchanged, and it is not regarded by the railroads themselves as an adequate compensation even for box cars, and would be ruinously low for refrigerator cars. If the number of cars exchanged between two roads were equal, no mileage or balance at all need be paid. If then, the power is given the railroads or it is made mandatory on them to pay to the private car companies as rental for the cars which they rent from them, only 20 cents a day, or any reciprocal rate they saw fit to fix, it is plain that the railroads might be prevented by law from paying even a just rental for private cars, which I assume is not the intention of the framers of the bill.

In conclusion I desire to emphasize the point that, as I understand it, the present law in the most sweeping way forbids discrimination by any device—through car lines or in any other way. I, however, think it is wrong to make private car companies, of which there are between 200 and 300 (some having only a few cars), common carriers, as they are not engaged in transportation, or to undertake to make refrigeration, which is a local service and at best only an incident to interstate traffic, subject to regulation.

Mr. Urion is here, and will dwell at length on the constitutional and legal phases.

There are a great many bona fide contracts in force between the railways and car companies, in all sections of the country, which run for various terms—up to seven years at least—which, together with numerous patents owned by these companies on the combination ventilator refrigerator cars, have a direct bearing on any legislation as a whole, and particularly any clause fixing mileage or rental to be paid

the car companies by the roads, which of course does not effect the shippers or the public.

Mr. STEVENS. Will you inform us first what is the relation between the Armour Car Line Company and Armour & Co., or the different divisions of the business known as the Armour business?

Mr. ROBBINS. Armour & Co. are a corporation. The Armour Car Lines are a separate corporation. The same individuals, to a large extent, own the stock of both companies.

Mr. STEVENS. What lines of business do Armour & Co. do?

Mr. ROBBINS. Armour & Co., generally speaking, engage in the packing-house business—the slaughtering and marketing of meats.

Mr. STEVENS. They do considerable other collateral business, do they not?

Mr. ROBBINS. I think only things incidental to it. We do a limited business, for instance, in butter, eggs, and poultry. Poultry, in particular, is a natural adjunct of the packing-house business. Our branch houses sell poultry and meat to the same local butchers.

Mr. STEVENS. And eggs?

Mr. ROBBINS. And eggs.

Mr. STEVENS. Now, you spoke of the canning business. How much of that does Armour & Co. do?

Mr. ROBBINS. We do a business in canned meats, in particular, and as incidental to that we put up soups and pork and beans with tomato sauce.

Mr. STEVENS. And mince-meat?

Mr. ROBBINS. And mince-meat and sausage, of course, as a part of the packing-house business.

Mr. STEVENS. Now, how much vegetable business do you do?

Mr. ROBBINS. Since May, 1904, we do not do any vegetable or produce business. Before that we did deal in vegetables, particularly apples and potatoes, to a limited extent.

Mr. STEVENS. Have you been dealing in potatoes any in the State of Michigan within the last fall and winter?

Mr. ROBBINS. No, sir; I understand not.

Mr. STEVENS. You have furnished refrigerator cars for carrying vegetables in and out of Michigan this last fall and winter?

Mr. ROBBINS. To some extent; but we have no contract with the railroad affecting the winter or potato business. If we have some cars to spare and the railroad wants them we furnish some as a convenience to both parties, but we are under no obligations to furnish them. Neither are they under any obligation to take our cars, particularly.

Mr. STEVENS. Then the Armour Company, or the Armour Car Lines Company, have not solicited consignments of potatoes from the Michigan market this last fall?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you solicited consignments of vegetables in the Kansas City market this last fall and winter?

Mr. ROBBINS. I am informed not. I can not answer that question as a whole, but in May, 1904, the policy was decided on of retiring from the vegetable and produce business, and to the best of my knowledge and belief that has been carried out. As I say, we have bought a few products for our own use.

Mr. STEVENS. Some person informed us that a circular was sent out by some of the Armour interests to the Kansas City markets this fall

or winter soliciting vegetables and fruits to be sold on commission in Kansas City. Do you know anything about that?

Mr. ROBBINS. Mr. Chairman, was not that an offer to take apples, in particular, on cold storage?

Mr. STEVENS. That is what I wanted to find out.

Mr. ROBBINS. I think we may have done that, not being interested in the property except as warehousemen.

Mr. STEVENS. Have you or not advertised in trade papers in the month of January last, either the Armour Packing Company or Armour & Co., and in that advertisement stated, "We handle fruits and produce for our patrons?"

Mr. ROBBINS. I am not aware of any such advertisement. The only way I know of is that we have solicited some business on storage for the account and benefit of the owner, without having any ownership in the products.

Mr. STEVENS. Then you handled them on commission, in that way?

Mr. ROBBINS. On the storage basis; on a storage basis.

Mr. STEVENS. And not on the commission basis, for selling?

Mr. ROBBINS. I do not think we sold any. I do not think we handled them except as warehouse men.

Mr. STEVENS. Now, if a circular did appear, or an advertisement did appear, of the Armour Packing Company or Armour & Co., containing this statement, "We handle fruit and produce for our patrons," what would that mean to the producers or to the trade? What would that signify? How would the trade understand these words "We handle fruit and produce for our patrons?"

Mr. ROBBINS. The inference would be there that we handled it on commission.

Mr. STEVENS. Yes. So that if that be true, if the Armour Company or the Armour Packing Company have advertised in that way, they would be in the commission business, would they not?

Mr. ROBBINS. I think the inference would be that the purpose was to handle it on commission. But so far as I know, the only thing that has been done is the offer to handle the stuff on storage, which we have always done.

Mr. STEVENS. Then this may be true; this statement that has been made to us may be true.

Mr. ROBBINS. It might be. I could not specifically deny it unless I investigated it, but I know that that general order was issued, and, as far as I know, it has been lived up to.

Mr. STEVENS. Now, if that be true, then the fruits and produce that would come into the Kansas City market over, for example, the Frisco line, which has an exclusive contract with you, would necessarily come in your cars, would it not?

Mr. ROBBINS. No, sir; our exclusive contract with the Frisco system simply covers strawberries and peaches.

Mr. STEVENS. It does not cover other fruit?

Mr. ROBBINS. Not apples or potatoes or any other kind of produce. Of course we never have handled, directly or indirectly, any shipments of fruit or strawberries, and those fruit shipments you speak of would probably not go in our cars at all.

Mr. STEVENS. They might or might not go in your cars?

Mr. ROBBINS. They might occasionally pick up one of our cars that was going back to Kansas City and ship their goods in it. But that

would not be done at our request or to our profit. The car would earn the same amount of money whether it came back empty or loaded with that produce.

Mr. STEVENS. That is, under your mileage contract with the railroad?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. At what date did you or the Armour interests send out a circular to their branches advising a discontinuance of the fruit and produce business?

Mr. ROBBINS. I think the first circular was issued in May, 1904.

Mr. STEVENS. Was not some business done in that line after that?

Mr. ROBBINS. I do not think there was. But there was some question came up on the subject, and I think the order was reissued some time in September.

Mr. STEVENS. There was another order issued in September?

Mr. ROBBINS. The order, I think, was reissued in September.

Mr. STEVENS. So that in all probability some business was done between May and September?

Mr. ROBBINS. I do not know that there was, but I might say in that connection that we have in the employ of the various Armour companies some 33,000 men, and we have several hundred branch houses, and I am sorry to say that sometimes men do not obey an order the first time it is given. If any was handled at all, it did not come to my attention, and I know that the head of the company issued a formal order to go out of that business entirely.

Mr. STEVENS. That order is in force now?

Mr. ROBBINS. Yes; and if there is anything of that kind being done, it is contrary to orders, and would be immediately stopped. I do not think it is being done.

Mr. STEVENS. Is there any complaint now against the Armour interests dealing in fruit or vegetables, before the Interstate Commerce Commission, in or out of Michigan, and engaged in rebating on that business?

Mr. ROBBINS. I do not quite catch your question.

Mr. STEVENS. Is there any complaint against you now, or against the Armour interests—any of the Armour interests—before the Interstate Commerce Commission to the effect that you are engaged in rebating in the Michigan vegetable business?

Mr. ROBBINS. No, sir; I do not think there is.

Mr. STEVENS. Is there any complaint before the Interstate Commerce Commission—

Mr. ROBBINS (interrupting). There was a case brought before the Interstate Commerce Commission, and the Commission have made a suggestion. I can not say that they have made a decision, and they certainly have not made any order. They have made a suggestion merely that the railroads and ourselves should get together and see if we can not find some way to make lower rates. That is the only thing that I know of that is pending or unsettled in regard to our Michigan matters.

Mr. STEVENS. It is a question of lower rates?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. On that point you remember the testimony of Mr. Ferguson respecting the rates in and out of Michigan before you had your exclusive contract?

Mr. ROBBINS. In a general way I do.

Mr. STEVENS. As I recall it, the testimony showed that the rates were increased after the exclusive contracts were made—the rates for icing, I mean.

Mr. ROBBINS. The refrigeration rate was increased, and I think that I have covered that point in my statement.

Mr. STEVENS. Yes; in your statement.

Mr. ROBBINS. I think I have stated why that increase was made. We did a little business in Michigan produce at that time. After our rates were increased our net revenue was not increased.

Mr. STEVENS. Why?

Mr. ROBBINS. The increase was due to the change of the rule on the part of the railroad.

Mr. STEVENS. What rule?

Mr. ROBBINS. Of the Pere Marquette, particularly.

Mr. STEVENS. I say, what rule?

Mr. ROBBINS. They previously furnished free ice. They either paid us for the ice or furnished it themselves. They changed that rule and decided thereafter to do as the roads everywhere else in the country did, to let the ice be furnished at the expense of the shipper. That caused a difference of expense to us, so that we increased our rate correspondingly and correspondingly only.

Mr. STEVENS. Is that the rule all over the country?

Mr. ROBBINS. That the shipper stands the expense of the ice?

Mr. STEVENS. Yes.

Mr. ROBBINS. Yes, sir; I think it is, universally. I do not know of anywhere where there is any other rule—that is, as to fruits and berries.

Mr. STEVENS. That is why I asked you.

Mr. ROBBINS. Yes, sir; as to fruits and berries.

Mr. STEVENS. How is it as to eggs and dairy products?

Mr. ROBBINS. In most cases the classification provides that on the articles classed as, I think it is, second class, and which will include butter, eggs, and poultry, the railroads shall furnish the ice.

Mr. STEVENS. And it is included in the rate?

Mr. ROBBINS. In the rate; yes, sir.

Mr. STEVENS. Yes.

Mr. ROBBINS. The rate is very much higher than on most of the other articles.

Mr. STEVENS. Why could not that be done as to perishable fruits and berries?

Mr. ROBBINS. I am not here to answer from the railroad standpoint, but I suppose by advancing the freight rate correspondingly it could be made to do it. We then, under our practices of handling fruits and berries, would charge less refrigeration and the railroad would charge a higher rate.

Mr. STEVENS. There is no business reason why it should not be done, is there?

Mr. ROBBINS. It is a varying and fluctuating item and I do not think it would be practicable to include it in the rate.

Mr. STEVENS. Do you think that rate would be lower on the average by making the charges that you do?

Mr. ROBBINS. Yes, sir; I do.

Mr. STEVENS. Than by including the rate in the freight?

Mr. ROBBINS. I do; yes, sir.

Mr. STEVENS. Have Armour & Co. or the Armour Packing Company or any of the Armour interests, during the year 1904, dealt in oranges?

Mr. ROBBINS. No, sir; I understand we did not. Anyway, not after May, 1904. We handled a few cars of oranges from California in 1903.

Mr. STEVENS. Was that the matter that you spoke of before in your statement?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Now, to what markets did those oranges go; do you recall?

Mr. ROBBINS. They generally went to small markets where the shippers had no facilities for marketing. I do not think any of them went to what are called auction markets, such as New York and Boston or Philadelphia. I remember one instance where we handled a car of stuff at Erie, Pa., a place which I think had never handled carloads of California green fruit.

Mr. STEVENS. Could you give us the names of some other places?

Mr. ROBBINS. We handled quite a little through the coal and coke regions of western Pennsylvania. I think at Scranton and probably Altoona and probably some of the smaller markets in particular. I think there were one or two cases where after the cars arrived at those small markets they found that they could not handle the stuff, and those cars were sent forward to some other market. But that was the plan that was carried out, as a rule, to handle that stuff at the small markets and place a part of that crop that otherwise could not be handled in those places.

Mr. STEVENS. Were these 150 carloads you have spoken of distributed around the country or mostly distributed in the East?

Mr. ROBBINS. Mostly distributed in the East; at the smaller towns.

Mr. STEVENS. In about what sized cities or towns; places of what population?

Mr. ROBBINS. About 25,000 to 50,000.

Mr. STEVENS. Did that 150 carloads include any lemons?

Mr. ROBBINS. I do not think so.

Mr. STEVENS. Did you deal in fine apples or apples of any sort during the year 1904?

Mr. ROBBINS. I think not after May, except such as we may have used in our own business.

Mr. STEVENS. How long have you been in the egg business?

Mr. ROBBINS. Armour & Co. have been in the butter, egg, and poultry business as long as I can remember. I think fifteen years anyway, and before we went into the fruit-car business.

Mr. STEVENS. You transport eggs and poultry and dairy products in your refrigerator cars?

Mr. ROBBINS. Our own products. Very rarely, if ever, the products of outside shippers. We do not solicit or do not look for that kind of business. I might say that I do know of an occasional case where the railroad has been short of cars for butter, eggs, and poultry where they picked up one of our cars and loaded it, but we do not solicit that business. We got the mileage on those shipments, and that was all.

Mr. STEVENS. That is to say, if in a market like San Francisco any of your competitors in the butter, egg, and poultry business desired to make shipments from the East they would not go in your cars?

Mr. ROBBINS. They probably would not.

Mr. STEVENS. They would go in the cars of the railroad companies?

Mr. ROBBINS. In any cars that were available.

Mr. STEVENS. Then you do not use your dairy, poultry, and egg cars for the fruit business?

Mr. ROBBINS. No, sir; the butter, eggs, and poultry are loaded in the same cars as our beef, and it is the exception when one of our fruit cars is loaded with butter, eggs, or poultry. But if we were short of another car, and one of the fruit cars was convenient, it might be used. But the rule is to load the butter, eggs, and poultry in the beef cars.

Mr. STEVENS. Then, if you sent a fruit car to California it would go empty, would it not?

Mr. ROBBINS. They generally go empty. The railroads sometimes load them with light, clean merchandise, but most of them go empty.

Mr. STEVENS. And you get the mileage empty as well as loaded?

Mr. ROBBINS. Yes, sir; generally speaking.

Mr. STEVENS. Now, when you send a dairy or beef car to California, it goes loaded?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. In what shape does it return?

Mr. ROBBINS. Sometimes empty and sometimes they load it with dried fruit, sometimes with wines or some other commodities that they may have coming east which are not covered by our fruit-car contract.

Mr. STEVENS. And you get the mileage for that car both ways?

Mr. ROBBINS. Yes, sir. You understand in that connection, Mr. Stevens, that the theory originally was to pay loaded mileage only at perhaps a double rate, but that created endless confusion as to keeping track of whether a car was loaded or empty, so that the compensation was divided in two and made to apply on every run, whether the car was loaded or empty, as an easier means of accounting.

Mr. STEVENS. Have you any idea of the rate of mileage, the average rate of mileage, that you secure on your cars throughout the year?

Mr. ROBBINS. The rate of mileage is generally three-quarters of a cent a mile run.

Mr. STEVENS. There are some higher than that?

Mr. ROBBINS. In limited localities we get a cent a mile on cars loaded with certain products. That is a relatively small part of the total. That is the public rate in certain localities. Everybody gets the same rate.

Mr. STEVENS. So that you calculate your rate of mileage is three-quarters of a cent?

Mr. ROBBINS. Yes, sir; generally speaking, with some few exceptions.

Mr. STEVENS. Do you get paid for actual mileage covered or any constructive mileage?

Mr. ROBBINS. Actual mileage only. In fact, where a railroad has a terminal or yard outside of the city they pay the mileage only to that yard, and then the cars are brought in by a switch engine, and they do not include that mileage.

Mr. STEVENS. You told us the cost of the cars. Will you give us the cost, as you remember it, of the different sorts of refrigerator cars that you use—fruit cars, dairy cars, and beef cars?

Mr. ROBBINS. The fruit cars cost about the same, \$1,100—that is, at the present time.

Mr. STEVENS. How does that compare with the cost in 1898?

Mr. ROBBINS. I think the cars cost somewhat less at that time, for the reason that they were shorter and lighter cars, as generally built then. The cars have been gradually increasing in size and in weight.

Mr. STEVENS. On what account? You say they are larger cars?

Mr. ROBBINS. One time we built the cars quite a little cheaper. They had no air brakes at one time, and no automatic couplers, and they were shorter.

Mr. STEVENS. And now you comply with the Federal law in those particulars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Do you recall your gross receipts for mileage, say for the last year or for the year 1903, for car mileage?

Mr. ROBBINS. Was it reduced?

Mr. STEVENS. No; do you recall your gross receipts for car mileage for 1903 or 1904, or for both years?

Mr. ROBBINS. No, sir; I could not give you that.

Mr. STEVENS. In calculating the expenses what do you call the expense of operation; that is, the men whom you employ?

Mr. ROBBINS. With respect to expenses, you mean particularly, or general operations?

Mr. STEVENS. Yes. Does that include depreciation?

Mr. ROBBINS. We make a separate charge for depreciation.

Mr. STEVENS. Outside of the expense for operation?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is your rate that you charge off for depreciation?

Mr. ROBBINS. We figure it at 12 per cent. And, explaining that, I want to say, as I have explained in my statement already, that it is not because a car actually wears out in eight years, but because by that time it is not fit for any high-class business. It has to be relegated to some poorer-paying business and worn out there as occasion permits.

Mr. STEVENS. What has been your average annual expense for repairs?

Mr. ROBBINS. I have not any figures here on earnings and expenses, Mr. Stevens. I did not know that was coming up.

Mr. STEVENS. In case of a wreck, and your cars being destroyed or greatly damaged, who stands the loss on that account?

Mr. ROBBINS. The railroads; they are responsible to us under a code of rules known as the Master Carbuilders' rules.

Mr. STEVENS. And you operate under those rules?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. And all that you are obliged to do to your cars is to make the ordinary repairs for wear and tear?

Mr. ROBBINS. Well, practically to make all the repairs. If repairs are made by the railroads they are generally charged to us, except in case of a wreck.

Mr. STEVENS. In case of wreckage and serious injury to a car, and in case you repair it yourself, you charge it to the railroads?

Mr. ROBBINS. Yes, sir; for wreck damages the railroads pay.

Mr. STEVENS. Would you file with the committee a statement showing the gross receipts for 1903 and 1904, your expenses for operation and repair, per car?

Mr. ROBBINS. I hope that you will not press that, Mr. Chairman.

Mr. STEVENS. Why?

Mr. ROBBINS. I would like to say that as far as this committee is concerned, strictly for their private information, I think there would be no serious objection to that, but we are a private company and, I am sorry to say, have some enemies, and I do not think that we should open our books to their inspection. I want to say further that our capital stock is low and our debt is large, and I know how those things are willfully misconstrued as earnings on capital; and I want to say further that for the time we have been in the car business, while we admit making some money, we have put all that profit and a great deal more, too, back into equipment and plants, so that as to the final outcome I do not think any man could express an intelligent opinion as to how much or how little money we are making. It depends on a great many uncertainties as to the future as to what we can do with these cars. We are investing over a million dollars a year in our plants and equipment, and are borrowing more money all the time.

Mr. STEVENS. Then you do not wish to file any such statement on the ground that you are a corporation outside of our jurisdiction?

Mr. ROBBINS. I do not know that I want to refuse to do that, but I will say again that I would very much prefer not to unless it is considered very necessary.

Mr. STEVENS. I will frankly tell you that we have no power to compel you to. It is entirely optional with you. The committee has no power to compel any man to testify.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. So that it is entirely optional with you.

Mr. WANGER. Do you not think, Mr. Chairman, that it might be possible that we would ask that authority later on?

Mr. STEVENS. I do not say later on. I say right now we have no authority to compel anyone to testify.

Mr. ROBBINS. I would like to know whether it is possible to submit those figures to the committee without their being open to our competitors so that they may learn the details of our business.

Mr. STEVENS. Entirely. I would like to know concerning them, and Mr. Adamson has spoken of that. We have received a great many charges as to that business, as to the rebating and the enormous profits, and the possibility of rebating, and I think that it is to your advantage that there should be some information before this committee.

Mr. WANGER. I would be very glad to receive the information, providing you did not regard it as an implied contract on my part not to make an effort hereafter to require public information if I should conclude from the testimony otherwise taken that that ought to be done.

Mr. ROBBINS. Well, I do not want to be considered as—

Mr. WANGER. If any inference of that kind was to be drawn, I would rather not commit myself at all.

Mr. STEVENS. The committee has discussed it, and thought that they must request the information.

Mr. WANGER. Yes; I would like it very much.

Mr. ROBBINS. Well, I will certainly consider favorably your request, or suggestion, that we file such information, and particularly if there is any assurance that it will not go beyond the committee.

Mr. STEVENS. You heard what Mr. Wanger stated?

Mr. ROBBINS. Yes, sir. I have been misquoted so many times in connection with these things by competitors and the papers that I am very reluctant about giving out information. As I say, we have a small capital, and if it was shown that we paid over 6 or 8 per cent on that small capital, even if we had a large debt and a very uncertain business, it would be dwelt on in a way that I think would be very detrimental with us. It is a business of uncertainties and vicissitudes, and is hardly to be considered on the same basis as a banking business or anything that is going to continue indefinitely.

Mr. STEVENS. Has there been any difference in the cost of building fruit cars between 1898 and 1904—any difference between building fruit cars and building dairy and beef cars?

Mr. ROBBINS. Yes; I think that the cost of construction of all cars has gradually increased. We are building a little heavier and a little better car all the time.

Mr. STEVENS. About how much?

Mr. ROBBINS. Since 1898, did you say?

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. I think since that time we have commenced building 40-foot cars instead of 36-foot cars, and the difference in that respect alone, I think, is \$100. Then the cars are built heavier in every way. The new modern locomotives are such that the cars built over six years ago are not strong enough to withstand the shocks to which they are subjected.

Mr. STEVENS. Will you file a definite statement showing the relative cost of building refrigerator cars from the year 1898 and for last year for general packing-house products and for fruit?

Mr. ROBBINS. I am willing to do that.

Mr. STEVENS. We would like to have that information. And in that statement I wish you would state the difference in size which you already have stated, and the amount of increase in weight, and the amount of steel used.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. You operate no stock cars?

Mr. ROBBINS. We do operate a few, yes, sir; between 100 and 200 only; but we have less stock cars than we used to have, and are gradually going out of that business.

Mr. STEVENS. You stated that you had invested in various ways about \$15,000,000?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How much do you consider is invested in cars, in equipment like cars?

Mr. ROBBINS. Probably \$14,000,000 of it.

Mr. STEVENS. How many cars have you?

Mr. ROBBINS. Fourteen thousand cars, approximately.

Mr. STEVENS. Divided into what classes?

Mr. ROBBINS. Well, they are almost all refrigerators. We have a few tank cars, about 125, and we have a few stock cars.

Mr. STEVENS. What are those used for?

Mr. ROBBINS. For shipments of cotton-seed oil and lard. They are used in our packing-house business almost entirely.

Mr. STEVENS. Then your cars average on your books about \$1,000 apiece?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How many repair shops have you?

Mr. ROBBINS. Our main shop is at Chicago, where we employ about 600 men. We have another shop at Kansas City, where we employ about 400 men, and in South Omaha we have one where we employ about 100 men, and we have smaller branch shops at Sioux City and Sacramento and Los Angeles and Mobile, and I suppose a dozen other places.

Mr. STEVENS. What investment does that represent?

Mr. ROBBINS. Practically three or four hundred thousand dollars.

Mr. STEVENS. You stated that you had more than 50 icing stations?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. About what investment would that represent?

Mr. ROBBINS. Well, the icing stations comprise most of the balance of our investment.

Mr. STEVENS. About a million dollars?

Mr. ROBBINS. Well, nearly that; yes, sir.

Mr. STEVENS. What is the annual cost of your ice that you use?

Mr. ROBBINS. I have no figures on that. I can generalize on it a little if you like.

Mr. STEVENS. Just approximately?

Mr. ROBBINS. I think we use about 500,000 tons per annum.

Mr. STEVENS. Is that natural ice or is most of it artificial ice?

Mr. ROBBINS. To-day in most places we use artificial ice. Most of the places where we use ice it is not formed naturally.

Mr. STEVENS. And you purchase it, as you indicated, at Chattanooga?

Mr. ROBBINS. Yes, sir; at places we have our own plants. We can not get anybody to supply the ice in certain places.

Mr. STEVENS. Of the 14,000 cars, could you tell us how many are fruit cars, how many are beef cars, and how many are general freight cars?

Mr. ROBBINS. About 8,000 of them are fruit cars and the balance are packing-house cars, most of the balance being refrigerators, including stock and tank and a few box cars.

Mr. STEVENS. That 8,000 cars includes cars only marked "Armour Car Line Company," does it?

Mr. ROBBINS. No, sir.

Mr. STEVENS. What other marks are there?

Mr. ROBBINS. The tank cars are marked "Armour tank line." The box cars are marked "Armour and Company;" and then several of our older cars we rent to breweries, and we put their names on them. Then some other outside concerns have some of our cars with their lettering on them. There are comparatively few of them, however.

Mr. STEVENS. Now, the fruit cars include those, for example, of the Continental Fruit Express, do they?

Mr. ROBBINS. I have lumped the Continental Fruit Express in with our fruit cars.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. Most of the fruit cars are lettered "Fruit Growers, Express," and some of them "Kansas City Express," and the Conti-

mental Fruit Express is a separate company; but the ownership is practically the same, and I am president of both companies, and in what I have said I have grouped both companies together.

Mr. STEVENS. About how many cars did you say were leased to brewers?

Mr. ROBBINS. We have perhaps 200 or 300 altogether.

Mr. STEVENS. And all of the cars of the Continental Fruit Express are fruit cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What do you calculate as your average mileage per day that your cars are expected to earn?

Mr. ROBBINS. I think that leads right up to the same question that we were talking about before, Mr. Stevens. I have not got the figures here, and I haven't it clearly in mind.

Mr. STEVENS. You do state your mileage in some public way, do you not? You are obliged to?

Mr. ROBBINS. No, sir; I think not.

Mr. STEVENS. What taxes do you pay?

Mr. ROBBINS. We pay State taxes in pretty much every State we operate in.

Mr. STEVENS. On what basis are those taxes calculated?

Mr. ROBBINS. Generally on mileage in the State.

Mr. STEVENS. So that you have filed a statement of mileage in several of the States, have you not?

Mr. ROBBINS. I think we have; yes, sir.

Mr. STEVENS. Do you recall the mileage filed, for instance, for the State of Michigan?

Mr. ROBBINS. No, sir; I do not.

Mr. STEVENS. Or for the State of Illinois?

Mr. ROBBINS. No, sir. Those tax statements I do not handle personally.

Mr. STEVENS. I think you see the importance of our having some statement as to the average mileage that you receive, or some statement from which it can be calculated, and I, for the committee, would like to have such a statement.

Mr. ROBBINS. I will answer that the same way as the other request, that I will consider favorably giving you some information on those lines.

Mr. STEVENS. Do you run your refrigerators in the dressed beef trade as fast as or faster than the fruit cars?

Mr. ROBBINS. Practically the same.

Mr. STEVENS. Do these dressed-beef or fruit cars run as fast as or faster than stock cars?

Mr. ROBBINS. Well, no faster, and frequently not as fast.

Mr. STEVENS. How do they average, in your opinion, as to mileage right through the year, in comparison with the stock cars?

Mr. ROBBINS. I think the mileage is not very different. Of course the stock-car rate per mile is somewhat less than that of the refrigerator car.

Mr. STEVENS. I am not speaking of the mileage, but of the rate of speed.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. You calculate that the one car can make about the same number of miles as the other?

Mr. ROBBINS. In a general way, but I have no way of drawing an intelligent comparison on that. We hardly consider ourselves in the stock-car business.

Mr. STEVENS. You were not here when Mr. Reichmann testified as to the daily mileage they expected from their cars?

Mr. ROBBINS. I saw his statement, but I have not got it very clearly in my mind.

Mr. STEVENS. That would be about 90 miles a day, as I understand it?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Your cars would run as fast as that?

Mr. ROBBINS. Approximately. I think there is no way of making the comparison; and in that connection I think it is proper to explain that the fruit cars do not make as much mileage as the packing-house cars.

Mr. STEVENS. That is what I wanted to know.

Mr. ROBBINS. Because the fruit cars necessarily are delayed more or less in awaiting loading in certain sections, and there is a period of the year when we can not use them at all. We sometimes have had as high as 2,000 or 3,000 fruit cars out of service, and sometimes more than that.

Mr. STEVENS. In making your returns for taxation what mileage do you return, the miles actually traversed?

Mr. ROBBINS. Yes, sir; we comply with the statutes in the various States in that respect. I think there are hardly any two States alike. The statutes are so complicated that I have long since dropped trying to keep track of them. We have a special man who works out those statements. Sometimes we get the information from the roads, and sometimes from our own books. Sometimes the roads running through two States will report all their mileage to us, and we have no way of knowing how much is in one State, and how much is in the other. It is a complicated process. In some of the States it is not on the mileage basis, but on the number of cars.

Mr. STEVENS. On the number of cars?

Mr. ROBBINS. Yes, sir. In California it is on the number of cars in each county on a given day, whether they are loaded or empty, and we settle with every county. The taxes are very high—I think \$5,000 or \$6,000 in California alone.

Mr. STEVENS. You have no item of expenses of operation separate from the expenses of repairs, have you?

Mr. ROBBINS. I think that we keep our repairs separate.

Mr. STEVENS. You keep them separate?

Mr. ROBBINS. I think so.

Mr. STEVENS. Then what would the expenses of operation include, insurance?

Mr. ROBBINS. That would be one of the expenses. Yes, sir; we insure our cars. And it would include salaries and expenses.

Mr. STEVENS. Would it include field agents?

Mr. ROBBINS. What?

Mr. STEVENS. Would it include field agents, soliciting business?

Mr. ROBBINS. Yes, sir; in all our districts, and all other employees. I do not know whether it has been made clear here that on a very large part of our business—for instance, in Georgia on peaches and North Carolina on berries—we load the fruit into the cars. The growers bring the crates to the doors and our men put them in place in the

cars and strip them, separating them so that cold air circulates around each package, and that is an item of expense that amounts to about \$3 a car.

Mr. STEVENS. Who collects it?

Mr. ROBBINS. The railroads for our account as part of our charge.

Mr. STEVENS. And that expense of operation would include that expense of loading.

Mr. ROBBINS. That would be one of the expenses of operation. The ice furnished, of course, would be an item, and as bearing on that I would say that we have quite a force of experienced men that we have no employment for for three or four months in the year but we keep them on our pay roll.

Mr. STEVENS. What sort of men?

Mr. ROBBINS. District men, who are particularly acquainted with icing and the distribution of cars and this loading. We find that we can not pick up men every year here and there who are competent to do that kind of work.

Mr. STEVENS. Have you any idea what amount is charged per car for operation, including these expenses, per annum?

Mr. ROBBINS. We do not get at it in that way. We keep a statement of operating expenses in connection with this fruit business for each district, showing the cost of ice, and the district men, telephone and telegraphing, and all the expenses that enter into it, and if we find that through our thrift or new arrangements we have been able to do the business more cheaply, we put down the rate. This coming season we have already decided to slightly reduce our rate in three or four different sections because we are getting a little cheaper ice and the business has increased in volume; and we insist that we only try to get a reasonable margin of profit on this refrigeration, and as soon as there are any conditions to warrant reductions we make them. In that connection I have here an abstract from the testimony of the secretary of the Georgia Peach Growers' Association at a hearing before the Interstate Commerce Commission last year, during the spring of 1904. Commissioner Prouty asked him "Is the icing charge satisfactory?"

Mr. HAZLEHURST. The icing charge is greater than on fresh beef or any other stuff that has to be handled the same way; but we are willing to pay the money for icing. In other words, if we can get the minimum reduced to what is really in the car, 400 crates, we are willing to pay \$68.75 and get the icing. We do not want them to take any ice off the cars.

Commissioner PROUTY. Do you think it is worth \$68 to keep those cars filled with ice? Are you satisfied that it is a reasonable charge?

Mr. HAZLEHURST. Yes, sir.

Of course the minimum is a thing that we have no connection with.

Mr. STEVENS. Then you base your charges for icing on the cost?

Mr. ROBBINS. On the cost, with a reasonable addition for profit.

Mr. STEVENS. Certainly. Do you not calculate to make an added profit out of icing to compensate for any lack of profit on mileage?

Mr. ROBBINS. As I have said, the mileage on the fruit car does not provide a reasonable remuneration, so that if we tried to do the refrigeration at bare cost and depended on the mileage we would not be in the business.

Mr. STEVENS. Then the cost of icing pays somewhat for service of the car?

Mr. ROBBINS. No, sir; I do not think that you can put it that way.

Mr. STEVENS. What is the statement?

Mr. ROBBINS. That there is no profit from the mileage from the car.

Mr. STEVENS. Where do you make your profit, then?

Mr. ROBBINS. We make a slight profit on the refrigeration.

Mr. STEVENS. All the profit that you get out of the business is out of the refrigeration?

Mr. ROBBINS. Yes, sir; practically so. It is on the fruit-car business. On a bare mileage basis I do not think that we would be in the fruit-car business.

Mr. STEVENS. How about the dairy and dressed-beef business?

Mr. ROBBINS. We are not in that except as to the shipments from our own houses, and we handle that in the same way as we handle the beef. The cars are constantly employed the year around, and there is a reasonable margin from the mileage from the cars in the packing-house business because of their constant service.

Mr. STEVENS. Then the difference in length of service makes the difference in the profit, does it?

Mr. ROBBINS. Yes, sir. Interest and depreciation is going on just the same.

Mr. STEVENS. About what percentage of the total mileage made by your refrigerator cars in the dressed-beef trade makes 1 cent a mile; do you recollect?

Mr. ROBBINS. No, sir; but generally speaking the 1-cent mileage is between the Missouri River and Chicago.

Mr. STEVENS. That represents a large traffic, does it not?

Mr. ROBBINS. It is a large traffic, yes, sir; but I would not think that it represented more than 10 or 15 per cent of the total.

Mr. STEVENS. The total of the dressed-beef trade?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. And the balance would be at three-fourths of a cent?

Mr. ROBBINS. Yes, sir; generally speaking. There is a cent a mile paid in one or two other districts.

Mr. STEVENS. Where?

Mr. ROBBINS. On shipments of beef only (not provisions), routed to Boston from Chicago via Montreal, there is 1 cent a mile paid. I will explain that in this way. The time was when there was a differential in the rate that way of 2 cents a hundred, and the mileage was three-fourths of a cent. For some reason, a great many years ago—I do not remember what it was—the plan was changed and the differential was taken off and the extra mileage paid as a substitute, so that the effect is practically the same.

Mr. STEVENS. And all of the balance of the business is on a three-quarters of a cent a mile basis?

Mr. ROBBINS. Yes, sir; generally speaking.

Mr. STEVENS. That includes the California fruit business?

Mr. ROBBINS. Yes, sir; the lines between the Missouri River and Chicago also pay a cent a mile on fruit cars.

Mr. STEVENS. But three-quarters of a cent west of the Missouri River?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Both ways?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Loaded or unloaded?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is the average mileage rate on box cars?

Mr. ROBBINS. The railroads pay the private car lines six-tenths of a cent. Of course the interchange between the railroads is 20 cents per car per day.

Mr. STEVENS. What do you calculate to get on your box cars?

Mr. ROBBINS. Six-tenths of a cent a mile, I think, universally.

Mr. STEVENS. And the same on stock cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How many days per year do you estimate that your dressed-beef cars are kept out of active service for the sake of making repairs and for other reasons?

Mr. ROBBINS. That would be a mere guess, Mr. Chairman, but I think thirty days out of the year.

Mr. STEVENS. Then they run eleven months of the year earning mileage?

Mr. ROBBINS. I think so.

Mr. STEVENS. How about the fruit cars?

Mr. ROBBINS. The fruit cars are out of service, I think, at least three months.

Mr. STEVENS. Then three-quarters of the time they are in service?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That makes the difference in the profits between the two?

Mr. ROBBINS. Yes, sir; from the mileage standpoint.

Mr. STEVENS. And how about the stock cars and box cars? About how do they compare in length of service?

Mr. ROBBINS. About the same as the beef cars. What few stock and box cars we have we generally use in our own service. The box cars, for instance, we have to load with fertilizer and hides, because the railroads object to having their own grain cars loaded with that kind of freight.

Thereupon a recess was taken until 2 o'clock p. m.

AFTERNOON SESSION.

The subcommittee met pursuant to adjournment, Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. GEORGE B. ROBBINS—Continued.

Mr. ROBBINS. Mr. Chairman, I would like to say a word about that Kansas City advertisement which was spoken of this morning.

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. I hope that it is plain to you that I would not willfully state as a fact something that was contrary to a public advertisement.

Mr. STEVENS. You do not need to state that, Mr. Robbins. I know you would not.

Mr. ROBBINS. I do not know what you have there or what it refers to, but I would simply like to repeat this: That I, personally, as representing the two car lines, have for some time opposed any Armour interest operating in produce, and that a year ago Mr. Armour, the president of Armour & Co., issued an order to that effect to all branches

and houses. That order was renewed again in September. We have many hundred branches, and a good many thousand men employed, and some of them new men, and it is always possible that some overzealous individual will do something the effect of which is not appreciated at the moment. But I want to say again that I know if any man in the Armour Packing Company has started out again to handle produce in any way it will be stopped. I know that policy has been decided on and that it will be held to.

I would say, also, that of course that is only a side light, at best, on the car-line question. That kind of stuff is not handled in our cars, as a rule, and whatever may have been done in it is by a different corporation; and while the commission man will naturally object to it, the grower of that produce will probably commend us just as much as the commission man will censure us for whatever has been done in that direction.

Mr. STEVENS. You understand the position of this committee. We have not any right to investigate your private business; but we have a right to know whatever in your business contributes to or is a device or a scheme for rebates or gives an opportunity for rebating or discriminations of any sort, or is the basis for any sort of an unreasonable or excessive charge for interstate transportation. Under the law we have a right to inquire into all that.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is exactly what we are trying to do.

Mr. ROBBINS. At the same time this fact of our dealing to a very small extent—or some of the Armour houses—in these products is made a very important feature by the other side, and I want to make the point that it is a drop in the bucket on the main issue, even if all they claim is correct; but I maintain again that the policy has been decided on in good faith to go out of the produce business and that it will be maintained.

Mr. STEVENS. Do you intend to run or try to run your cars as fast as the other refrigerator companies engaged in, for instance, the beef business, such as the S. & S. Company or the Swift Company, to make as many miles a day?

Mr. ROBBINS. Generally speaking, the cars loaded with fruit and the cars loaded with beef are carried in the same trains and on the same schedules in the same district.

Mr. STEVENS. So that they make about the same speed?

Mr. ROBBINS. They make about the same speed while running; but, as explained before, the fruit cars have an off season, which is not true of the beef cars.

Mr. STEVENS. The point that I have in mind is that you run your cars about the same as the other companies run their cars, and there is no great difference as to speed?

Mr. ROBBINS. No, sir; not as long as they are in service at all. Of course, in connection with the fruit, there is not only the off season, when there is little business moving, but it is necessary also to accumulate cars, frequently a week to a month in advance, to meet the demands of the fruit business in the territory in the busy season, whereas the beef cars are generally moved in and out without much delay. It is through our thrift that the mileage referred to is obtained, even out of the beef cars.

Mr. STEVENS. Who owns the National Car Line Company?

Mr. ROBBINS. We have no interest in it.

Mr. STEVENS. You have no interest in it?

Mr. ROBBINS. No, sir. As I understand, it is a separate corporation.

Mr. STEVENS. What sort of cars do they run?

Mr. ROBBINS. Packing-house cars, nearly altogether.

Mr. STEVENS. For packing-house products?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. They report to the State of Iowa for purposes of taxation the average mileage of their refrigerator cars as 300 miles a day. Do you think that is possible?

Mr. ROBBINS. I would not think that it was, Mr. Stevens. If it is, they are a good deal smarter than we are.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. But this explanation might be made in connection with that, that the cars simply cross the State of Iowa from South Omaha for eastern points, and none of the delays incident to the business are experienced in Iowa. The cars are in Iowa only while in train.

Mr. STEVENS. You state that you charge off for depreciation 12 per cent per annum on your refrigerator cars?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Is that the master car builder's estimate?

Mr. ROBBINS. No, sir. The master car builder's rule, which was formulated to cover box cars, and stock cars, and coal cars, is 6 per cent. But we figure 8 per cent on stock and box cars and 12 per cent on refrigerators.

Mr. STEVENS. That is what I wanted to get at. Now, in operating the cars, and in turning over cars to a railroad company for three quarters of a cent per mile, what do you furnish and pay; just the cars, or anything else? Do you pay the expense, for example, of lubrication?

Mr. ROBBINS. No, sir; except when a car needs lubrication when leaving our own shop. In passing over a road, the railroad furnishes the lubrication.

Mr. STEVENS. What I wanted to get at was the expense of operation, and I think that you have answered that. You could not give the average annual expense per car of the different classes?

Mr. ROBBINS. No, sir; I haven't those figures.

Mr. STEVENS. Either for repairs or operation?

Mr. ROBBINS. No, sir; I haven't those figures.

Mr. STEVENS. Could you get them and furnish them to the committee?

Mr. ROBBINS. Well, I think that should be included with my other answer on the question of earnings and expenses.

Mr. STEVENS. And you do not wish to answer on that account?

Mr. ROBBINS. I prefer not to agree to furnish it at the moment.

Mr. STEVENS. Is there any difference in the cost of repairs when a car is hauled an average of 100 miles a day and the cost when it is hauled an average of 50 or 75 miles a day?

Mr. ROBBINS. Yes, sir; I would say that there would be.

Mr. STEVENS. Is there any rule about that?

Mr. ROBBINS. No, sir; I do not think there is any way of proving the difference, beyond the fact that the expense is more when it is run-

ring than when standing still, and that the faster it runs the more the expense would be, the more wheel wear there would be, naturally, and the more general wear and tear. The wear and tear on any equipment is greater the faster it runs.

Mr. STEVENS. I notice in the reports to the State of Michigan that most of the refrigerator cars there run at about the rate that the National line runs in the State of Iowa. In what way are the beef cars run through the State of Michigan—as through trains, or through business, generally?

Mr. ROBBINS. The Michigan Central and the Grand Trunk, that carry most of the east-bound beef business from Chicago, receive their loads in Chicago, and the contents of those cars are destined through Detroit or Buffalo, for instance.

Mr. STEVENS. At about what rate are the cars run through the State in that way—20 miles an hour?

Mr. ROBBINS. Well, the time from Chicago to New York is generally sixty hours.

Mr. STEVENS. Nine hundred miles?

Mr. ROBBINS. About 900 miles, which would be about 15 miles an hour.

Mr. STEVENS. Fifteen miles an hour?

Mr. ROBBINS. While they are in through trains. That, of course, refers to the loaded movement only.

Mr. STEVENS. Yes.

Mr. ROBBINS. And empty, the rate might not be a quarter of that.

Mr. STEVENS. Have you any objection to informing the committee with what railroad lines you have exclusive contracts?

Mr. ROBBINS. I have no objection whatever.

Mr. STEVENS. We would like to have a list of the lines.

Mr. ROBBINS. I can mention a good many of them, or I can send you a complete list.

Mr. STEVENS. We would like a complete list.

Mr. ROBBINS. I have no objection to that whatever.

Mr. STEVENS. Are the contracts substantially the same as the Pere Marquette contract?

Mr. ROBBINS. Generally speaking, yes, sir. I can state in a very few words the substance of them all.

Mr. STEVENS. What points of difference are there?

Mr. ROBBINS. We agree to furnish all the cars required, and suitable cars, ice, and ample refrigeration, or respond in damages in case of failure to provide any of the items mentioned. On the other hand, the railroad company simply agrees to use our cars exclusively for certain specified business for a certain period. It generally refers to berries or peaches or high-grade fruit.

Mr. STEVENS. Would you leave with the stenographer or send to the stenographer a blank contract, so that we could have an idea of the provisions?

Mr. ROBBINS. The Pere Marquette contract, so far as that is concerned, is printed in the Senate proceedings.

Mr. STEVENS. Perhaps you had better send us a copy, so that we can have a copy here.

Mr. ROBBINS. Very well.

Mr. STEVENS. How many refrigerator cars did you furnish the Pere Marquette Railroad under the terms of that contract for the year 1904?

Mr. ROBBINS. I can only speak from memory, but if I remember right that was an off year, and we handled up their line about 1,500 carloads of peaches and grapes, which probably took from 1,000 to 1,200 individual cars.

Mr. STEVENS. Was that less than previous years?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Why; was the crop smaller?

Mr. ROBBINS. It was smaller in Michigan and much larger elsewhere. For instance, Georgia had a very heavy crop last year. Delaware and some other sections had heavy crops also, and that interfered with the Michigan shipments, particularly to the Far East.

Mr. STEVENS. Is there any difference in the different months in the year as to the number of cars that are required? How many are furnished each month?

Mr. ROBBINS. In all sections?

Mr. STEVENS. No; in Michigan.

Mr. ROBBINS. Yes, sir; decidedly.

Mr. STEVENS. About how long would that be?

Mr. ROBBINS. On the business that we undertake to handle there, it all moves practically within two months—September and October.

Mr. STEVENS. So that you furnish no cars at other times of the year?

Mr. ROBBINS. Practically none. We are under no obligations to do so, and we are not really called upon to furnish any.

Mr. STEVENS. And your contract, then, only covers the fruit?

Mr. ROBBINS. The peaches and grapes moving during a period of about two months.

Mr. STEVENS. About how many cars did you furnish to the various roads with which you had contracts during the last year?

Mr. ROBBINS. Do you mean the largest number of individual cars?

Mr. STEVENS. Yes.

Mr. ROBBINS. Through individual lines?

Mr. STEVENS. Yes.

Mr. ROBBINS. I think that our largest contract is with the Southern Pacific, under which we agree to furnish them all the cars required up to 5,000 cars.

Mr. STEVENS. Did you furnish that many?

Mr. ROBBINS. I think at times we have had the full number in their service. Most of the contracts do not even provide any maximum number of cars, because we feel able to take care of all the business, whatever it may be.

Mr. STEVENS. When you furnish your list of contracts, would you please place opposite the number of cars that you furnished last year?

Mr. ROBBINS. I will approximate it; yes, sir. I do not know that we can tell it exactly.

Mr. STEVENS. State it as closely as you can.

Mr. ROBBINS. Do you mean the number of cars handled under that contract or the number of individual cars?

Mr. STEVENS. The number of cars handled under the contract.

Mr. ROBBINS. We can give you that very readily.

Mr. STEVENS. Of course, the individual cars would be hard to give?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What is the organization known as the California Fruit Distributors' Company?

Mr. ROBBINS. I know the organization in a general way, if it can be called an organization. I think that it is a cooperative body of the northern California fruit growers and shippers.

Mr. STEVENS. They have their headquarters where?

Mr. ROBBINS. At Sacramento.

Mr. STEVENS. Do they make any contracts with you?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you any business relations with them at all?

Mr. ROBBINS. Not direct. We handle the business of the members.

Mr. STEVENS. Through what line?

Mr. ROBBINS. Through our fruit growers' express line and over the Southern Pacific.

Mr. STEVENS. Over the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Do you offer any special inducements for them to do business with you?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Have you ever paid them any rebates?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Or have you ever authorized any drawback, discrimination, or preference?

Mr. ROBBINS. No, sir; we have never had any business with them in any way, shape, or manner. They do not rank as a shipper. They are organized to look after the distribution of the fruits from northern California, the stated purpose, I believe, being to avoid a glut in any particular markets, with the hope of getting better prices for the producers.

Mr. STEVENS. They are a distributing company?

Mr. ROBBINS. They are a distributing company, and we do not come into contact with them in any way.

Mr. STEVENS. What is the Producers' Fruit Company?

Mr. ROBBINS. That is one of the shipping companies of northern California.

Mr. STEVENS. Of the same nature as the one I last described?

Mr. ROBBINS. No, sir; that is an individual shipping company, which I think belongs to the Distributors' Association which you spoke of.

Mr. STEVENS. And the Pioneer Fruit Company?

Mr. ROBBINS. They are another shipping company and a member of the Distributors, I believe.

Mr. STEVENS. And the Penryn Fruit Company?

Mr. ROBBINS. That is another, I believe.

Mr. STEVENS. Do you have any business with any one of these individual concerns?

Mr. ROBBINS. Yes, sir; we handle, I think, the business of all of them.

Mr. STEVENS. Do you make any direct contracts with them?

Mr. ROBBINS. Yes, sir; I think that we have.

Mr. STEVENS. Over the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Not included in your exclusive contract?

Mr. ROBBINS. Well, it is a question whether the exclusive contract does not cover it anyway, but we have a separate contract with some of those concerns.

Mr. STEVENS. Do you give them any advantages over other members of the California Fruit Distributors' Company?

Mr. ROBBINS. No, sir.

Mr. STEVENS. They all have the same rates and facilities?

Mr. ROBBINS. Yes, sir; under the same conditions. I think I know what you are leading up to, and if you like, I will explain it.

Mr. STEVENS. Yes; that is what I would like to know from you.

Mr. ROBBINS. It can perhaps best be explained by illustration. At Sacramento fruits, particularly pears, come up the river by boat, and are put into the cars at Sacramento. The shippers watch the fruit as it comes off the boat, and when one of them finds a car of stuff is comparatively green, and he thinks he would like to have it ripen up a little, he will give us orders to let that car run without ice to our first icing station, which is at Truckee, at the summit of the Sierra Nevada mountains, where ice is cheaper than in California. The next car he will decide it better to have iced at Sacramento, and will so order. It would be very difficult to cover that in a tariff, so that a man at the eastern destination would know whether that car was iced at Sacramento or Truckee. There would be nothing in the billing or anything else to show; so that we bill such cars at the regular Sacramento rate.

When a man orders his car run to Truckee under ventilation, it saves ice, and we get cheaper ice on top of the mountains, and we refund to the shipper the difference between the cost of the car iced and not iced, what we save by not icing it, and that car will cost less than the car which received full icing at Sacramento. It can not be called a rebate—it is an equalization. It is a method of bookkeeping. It is the most convenient way for the shipper and for us. He then has the same charges collected at the eastern end on all cars, and where there is a saving in the ice to us, he gets the benefit of it.

Mr. STEVENS. That is, in the difference of the saving in ice?

Mr. ROBBINS. Yes, sir. Our Southern Pacific contract, as indicated in that Sacramento Chamber of Commerce report which I read, is most exacting in that we shall not discriminate, and it compels us to treat all shippers alike.

I might say further, in that connection, that an occasional car is even run as far as Ogden before it is iced, and sometimes a car goes through the other way, via Bakersfield, or even runs to Los Angeles without ice, and we make an adjustment dependent on what saving in ice is performed. Further, at times, from a place named Vacaville, a local point on the Southern Pacific, shippers sometimes order their cars fully iced and sometimes not at all and sometime half iced, and we adjust with the shipper dependent on the amount of ice used.

Mr. MANN. Do you treat all shippers alike in that?

Mr. ROBBINS. All under the same conditions.

Mr. MANN. Can any shipper order a car not iced or half iced or fully iced?

Mr. ROBBINS. Yes, sir. The conditions vary so with every day and with every shipper that we do not try to cover it in our tariff. It would be impracticable to do it. But the shippers and owners of the stuff understand it as well as we do, and it is open to all alike.

Mr. STEVENS. The orders are given in advance?

Mr. ROBBINS. Yes, sir; the shipper tells our local man what he wants—a fully iced car or one not iced at all.

Mr. STEVENS. Are the Armour interests allied with or interested in any way in this California Fruit Distributors' Company? Are you a member of that concern?

Mr. ROBBINS. In no way whatever. It has been frequently charged in papers, I know, that we steered the organization, but if I had quoted more of the Sacramento Chamber of Commerce report, you would have found it decided that that charge was without any foundation, and we never had any interests in them in any shape or manner.

Mr. MANN. Either directly or indirectly?

Mr. ROBBINS. Directly or indirectly.

Mr. STEVENS. When did you purchase the interest of the Earl Fruit Company and their plant?

Mr. ROBBINS. In 1900 or 1901, I am not sure which it was, we were offered the entire properties of what was known as the Earl properties, which were the Earl Company, the Continental Fruit Express, an ice company in the mountains, and I think one or two other small companies. We offered to buy the car line and the ice company, but Mr. Earl refused to sell unless he could sell all the company's property. I was in California myself and handled the deal, and the negotiations ran over a period of about six weeks. During this time we found some other people that were willing to buy the fruit company, Mr. Gerber, of Sacramento, and his associates. Mr. Earl, though, for certain legal reasons, would not contract for one without the other in the same contract, and so we bought all the properties and took them into our name, but within a week or two—just as quick as it could be legally done—we turned the fruit company over to the people referred to, and we do not now own the fruit company; and while technically we did own it for a week or two, that is all the connection that we have had with the fruit company.

Mr. STEVENS. Your interest ceased when you turned it over?

Mr. ROBBINS. It ceased within a week or two of the time we got it. We never operated it.

Mr. MANN. You did not operate it at all?

Mr. ROBBINS. No, sir; unless you can call that interval of a week or two operating it.

Mr. MANN. Did you operate it during that interval?

Mr. ROBBINS. That was during the winter season, when they were doing very little business anyway, and the same men in charge continued along, and we gave no orders in connection with the business at all.

Mr. MANN. You did not put any new men in?

Mr. ROBBINS. No, sir. I might say in that connection, speaking of men, that we sent for one of our men to check up certain things in connection with this deal, which he did, and after he got through, the Earl Fruit Company hired that man, and he is still with them. But it was simply a coincidence, and had nothing to do with our transaction with them at all, since when he left our employ and went into theirs he had nothing whatever to do with our business. We parted company with the fruit company interests in every respect.

Mr. MANN. You say that he was not put there to represent any Armour interests?

Mr. ROBBINS. No, sir; he was not, except during the interval of our taking over these companies. He examined the books for us. He came out there as our expert and expected to go back in a few weeks

and they rubbed up against him and liked him; and he had a boy that had some throat trouble and wanted to live in California, and they finally hired him and he stayed there.

Mr. STEVENS. Then, you have no interests in any of these fruit concerns that I have named?

Mr. ROBBINS. No, sir; none whatever.

Mr. STEVENS. And you have no voice in their management or operation?

Mr. ROBBINS. No, sir. I think that we have been charged, one time or another, with owning every fruit company in California. I think that is a correct statement.

Mr. STEVENS. Who controls the routing of the California fruit—you or the shippers?

Mr. ROBBINS. The shippers; that is, the shippers so far as we are concerned. The shippers and the railroads have had some discussion about that, but I believe that the shippers have finally gotten a Supreme Court decision in their favor. That was with respect to the orange business, the southern California business, where the railroads undertook to route the freight; but that was without any connection with us. In fact, our Southern Pacific contract specifically took away from us any right to route, and we never have undertaken to route at all.

Mr. STEVENS. Your contract provides against that?

Mr. ROBBINS. It takes that away from us, or rather gives to the shippers the right to route without any respect to our wishes.

I might call your attention to this fact, that we do business of one kind or another with practically every one of these eastern roads. If we went into California or Missouri, or anywhere else, and undertook to route business against one road and in favor of another, we would immediately be in hot water with the roads that we undertook to route the business away from. It would be the most serious thing, even if we had the right to do it. We have not the right and have not the inclination to do it. In fact, I have time and time again refused to have anything to do with the routing.

Mr. STEVENS. Do you have any arrangement for compensation for turning additional tonnage over to any one road?

Mr. ROBBINS. No, sir; we do not do it.

Mr. STEVENS. Have you ever done that?

Mr. ROBBINS. Well, there was a time long ago, but certainly not for a great many years, a period in the early days in California, when there were four or five car lines there, and the situation was somewhat mixed, and I do not think we did the same thing two days alike over there.

Mr. STEVENS. Is that arrangement in force?

Mr. ROBBINS. No, sir; there is nothing of the kind in force now, nor has there been for a great many years.

Mr. STEVENS. You neither receive nor pay anything for change of rates or change of destination for any freight?

Mr. ROBBINS. We do not.

Mr. STEVENS. About how many refrigerator cars do you assign to the California business?

Mr. ROBBINS. Our contract with the Southern Pacific provides for up to 5,000 cars, and we sometimes have that full number in their service, and I think some more at times.

Mr. STEVENS. Have you ever engaged in the vegetable and produce business at Los Angeles?

Mr. ROBBINS. Generally speaking, no, sir. I probably should qualify that by saying that previous to a year ago I think we did handle, either on consignment or by purchase, some California celery.

Mr. STEVENS. That was before the issuance of that circular?

Mr. ROBBINS. Before the issuance of that order to keep out of the produce business.

Mr. STEVENS. Have you done any of that business since?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Are you interested in any way in an organization known as the California Vegetable Union, at Los Angeles?

Mr. ROBBINS. No, sir.

Mr. STEVENS. You have no connection with or control of it?

Mr. ROBBINS. No, sir; except as they are customers of ours. We handle much of their business.

Mr. STEVENS. What proportion of the business of Southern California in that line, do you know, is controlled by that organization?

Mr. ROBBINS. Well, I do not know; but I would say the greater part of it.

Mr. STEVENS. Have you any preferential arrangement with that concern over there, or concerns operating in that territory?

Mr. ROBBINS. None whatever.

Mr. STEVENS. You have no other business connection with them than you have with other shippers in that territory?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Does the Armour Company, or any of the Armour interests, have any control of the Hammond Packing Company?

Mr. ROBBINS. Well, you are getting a little out of my specialty, but I think that some of our people do own some of the stock, either of the Hammond Company or of the holding company that owns that packing company, or owns the Hammond Company.

Mr. STEVENS. Do you know if the Hammond Company operates in the different kinds of produce that go through your cars?

Mr. ROBBINS. No, sir; I would not be a competent witness on that.

Mr. STEVENS. You do not know anything about that?

Mr. ROBBINS. No, sir; I do not.

Mr. STEVENS. Do you have any direct business with the Hammond Packing Company in the line of carrying produce?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Do you make any preferential arrangement with the Hammond Packing Company?

Mr. ROBBINS. No, sir; I do not think we do any business with them. I do not know them as a shipper or receiver in our cars. I never heard of them in that line.

Mr. MANN. They used to have a line of cars of their own.

Mr. ROBBINS. They have cars of their own. But I think it is entirely a packing-house line of cars. They have no fruit cars.

Mr. MANN. I think that is true. The Hammond Packing Company used to be located just across the State line in Indiana, and that packing business, I think, has been moved up to the stock yards.

Mr. ROBBINS. Yes, sir; I think so.

Mr. MANN. I am not sure, but it seems to me that the Armour Packing Company and the Swift Company and some more of them had absorbed the Hammond Company at one time.

Mr. ROBBINS. As I say, I think some of our interests have an interest in the stock of the company.

Mr. MANN. The old packing plant is closed up?

Mr. ROBBINS. Yes; and they have opened up at the stock yards.

Mr. MANN. Yes; they have opened up at the stock yards.

Mr. ROBBINS. Generally the Hammond Packing Company do no car business except in the handling of their own products. There may be rare instances in which they do, but from my experience I believe that to be almost a universal rule with them. I happen to know that they are frequently short of cars for their own business, and want to know if we can loan them some cars.

Mr. STEVENS. Does that company have any contract requiring the operation of your service into Mexico, so that it is a foreign service from this country?

Mr. ROBBINS. Yes, sir; our Southern Pacific contract covers a part of the business in Mexico.

Mr. STEVENS. It extends into their Southern Pacific lines?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. And the same conditions obtain there as do in this country?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Do you have any exclusive contracts in Canada in connection with lines of this country?

Mr. ROBBINS. No, sir; I do not think we do. That, generally speaking, is not a fruit or berry producing section.

Mr. STEVENS. You run cars or have your cars run in and out of Canada connecting with other business, I presume?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Will you please state again about what proportion of your ice you get, and under what circumstances you get ice from the railroad companies, and under what circumstances you furnish your own?

Mr. ROBBINS. In practically all cases we furnish our own ice. For instance, in California, Georgia, Florida, and the Carolinas, which are the largest producing sections in which we operate, we furnish every pound of the ice we use, and from Georgia and the southeast to Boston and New York, for instance, we furnish every pound of ice en route—that is, it is furnished out of our own stations by our laborers employed by us, and superintended by the skilled men employed by us for that purpose. In many instances the railroads not only do not furnish us with ice, but we furnish them ice where they are engaged in the refrigerating business. You probably have in mind the clause in the Pere Marquette Railroad contract, in which they agree to furnish us such ice as they can spare at two or three or four stations named at a certain rate per ton. That is a very small fraction of the ice that we use, even in Michigan, and the balance of the ice we get outside, wherever we can get it to the best advantage. One year we even had to ship ice into Michigan from our own plant at Cedar Lake, Ind. We could not get the ice in Michigan. We have a large number of our own icing stations; one at Toledo of 18,000-ton capacity, and one at Columbus of about the same capacity, and upward of fifty other stations. We own the stations and handle the ice with our own men and under our own salaried superintendents.

I go into that somewhat at length because Mr. Ferguson made the point that generally the railroads furnished the ice, and we simply put on the bills of lading for the railroads to look after the icing en route. That is not practically a fact at all. At a few points, where there is not much ice used and we can buy it from the railroads to better advantage than we can furnish it ourselves, we buy it of the railroads, but that is for a very small part of the business.

Mr. STEVENS. In arranging for your refrigerating tariffs, do you consider distance in fixing rates?

Mr. ROBBINS. Generally speaking, not at all; no, sir.

Mr. STEVENS. You fix the rate on the service?

Mr. ROBBINS. On the cost of the icing service, with a reasonable profit added to it. I think that was brought out here in Mr. Ferguson's testimony, about our rates being \$45 from Oregon to St. Paul, and being the same from a point in Indiana to Chicago, where the first distance was ten times greater than the other, but the profit was the same to us. In one case there was plenty of ice where the business originated, and the railroad furnished free ice to St. Paul, while in the other case there were exactly contrary conditions.

Mr. MANN. What is that about a railroad furnishing free ice? Mr. Ferguson did not say that, as I understood him.

Mr. ROBBINS. In the case of the Northern Pacific the rule is to charge for the initial ice used at the loading stations, or to make the shipper or the car line, whoever is doing the work, furnish the ice. The railroad does not furnish it. The Northern Pacific, however, did furnish free ice on their line between the shipping points and St. Paul. We have our cars iced at their stations, but they do not make any charge for it. We give the shipper the benefit of that saving; so that our rate from Oregon to St. Paul appears abnormally low as compared with our rate from some other point where a different rule prevails. So that answers the question, that distance has very little to do with it. It is a question of cost and the conditions.

Mr. MANN. In other words, the Northern Pacific includes in its rate charge—in its freight-rate charge—the cost of icing, except at initial point?

Mr. ROBBINS. Yes; I think that would be one way of putting it. I do not know whether they would grant that view of it or not. But the fact is that they do not charge us for that ice.

Mr. MANN. Do they charge the shipper for it?

Mr. ROBBINS. No, sir; they do not charge the shipper.

Mr. MANN. They either include it in their original freight charge or else do it as a matter of grace and gratuitously?

Mr. ROBBINS. The Michigan roads, as has been explained, did it at one time, but they changed that rule. They also furnished the initial ice at one time. That is the only case in the country where that has been done, so far as I can remember.

Mr. STEVENS. Is there any difference in the supervision given by you to fruits and berries loaded in different places?

Mr. ROBBINS. Somewhat; yes, sir.

Mr. STEVENS. Is there any difference in Georgia on account of that condition?

Mr. ROBBINS. I will explain that if you will let me.

Mr. STEVENS. Certainly.

Mr. ROBBINS. In Georgia and the Carolinas the berries and peaches we receive at the car door and put them in place in the car and put strips between every layer of packages and nail them in place so that there is a circulation of cold air around every package. That is done at an average expense, I think, of something like \$3 a car. This expense, of course, we take into account in making our rate. The railroads never load the stuff in any locality. In some places, for instance in California, the practice is for the shipper to put the fruit into the car and load it correctly and strip it. They have learned how to do it, and we let them do it and take that into account in making our rate for refrigeration, whether we load the stuff or whether we do not load it. That is a matter between us and the shipper. In one case the shipper is relieved of the charge, and in the other case it devolves on him to pay it. When he does the loading we take that into account in making our charge.

Mr. MANN. Do you make any discrimination between different localities or between different shippers in that respect?

Mr. ROBBINS. No, sir. That is not shown as a separate item on our tariff at all. It is simply taken into account. As I say, it generally costs us about \$3 a car to load the cars. It varies some what in different sections. Once in a while there is a man like Mr. Hale, of Georgia, who was here the other day, who figures out what it would cost us to do that loading and asks us to allow him to do it, and I think we have been doing that in his case. Whether it costs him more or less I do not know. That is a matter of convenience, without any particular regard to whether there is a profit or loss in it. We consider that it is the same to us, and I do not think there is any difference to him. If there is a difference at all, it is a difference, perhaps, of 25 or 50 cents a car. That is not the incentive, however, in doing it. The incentive is because it is a matter of convenience. We are very glad to be relieved of loading the stuff if the shippers will do it, but in many cases they will not do it. It is a trouble and annoyance to get the laborers and to keep them to do the loading and stripping.

Mr. STEVENS. The other day some of these gentlemen testified that they made contracts with you directly and some made contracts with the railroads. Is that the plan adopted all over the country?

Mr. ROBBINS. No, sir; I think the plan is the same everywhere. The shippers, I admit, may have a little different view of whom they are making their arrangements with. For instance, Mr. Hale stated that he and the other shippers were parties to a conference with the railroad before any arrangement was made with us. Then, when it came to making the arrangement itself, it was turned over to the railroad to make it. Under that arrangement we agreed to furnish sufficient and proper cars and refrigeration. The practice is that if a man has a claim, he comes to us with it and we settle it with him. If he prefers, though, he can make his claim against the railroad, or if he has any better legal standing and wants to bring a suit, he can bring it against the railroad, and in those contracts we indemnify the railroad against those claims. So that as a matter of fact the shipper has the double recourse—on us and the railroad also.

Now, the shippers expressed a difference of opinion, as you say, as to how they got these cars, as I remember, as to whether they dealt with the railroad or with us, but the fact is, that in all cases we fur-

nished the cars to the railroad. Whether it just occurs that way to the shipper or not, I do not know. We have not any way of furnishing the cars to the shippers.

Mr. STEVENS. This gentleman on the Baltimore and Ohio Railroad up here in West Virginia testified that he dealt with that company directly.

Mr. ROBBINS. Yes, sir; he did, as regards refrigeration, and I do not know but what he said also as to the car supply.

Mr. STEVENS. Yes; he did.

Mr. ROBBINS. But as a matter of fact, he ordered the cars from the railroad, and we delivered them to the railroad at some other point, and the railroad took them to him; so that, regardless of his view, I say, I do not see how it can be regarded that we furnished him a car. We have no means of doing that. We are dependent on the railroad as an agency.

Mr. STEVENS. I asked him with whom he made the contract for the refrigerating car service and he said with the Armour company.

Mr. ROBBINS. I will explain how that peculiar condition comes up with respect to Mr. Pancake. He is about the only peach shipper from that district on the Baltimore and Ohio. He has a right to use railroad cars or any other cars that he can get; but, regardless of that, for the last several years, when he has been ready to make his shipments he has asked us to supply him with cars and refrigeration, generally naming the number of cars—100 or 200 or 225 cars—and we have said to him that we would do so; and then I think his process of carrying that out, though, is that he ordered the cars from the railroad, and we deliver the cars to the railroad, so that while in one sense he can say that he made his arrangement with us, yet it was carried out by the railroad.

Mr. MANN. I suppose that if you have an agent there with whom he deals he might very easily say to that agent that he would want your cars, and your agent would tell the railroad company to have them there, and in that respect your agent might be acting as his agent and not as your agent?

Mr. ROBBINS. Certainly; and the railroad is the agency. We have no exclusive contract with the Baltimore and Ohio. We talk with Mr. Pancake and find out what he wants, and arrange to supply those cars to him and furnish the refrigeration. It is merely a short method of reaching the same results without going through the form of an agreement and a specific contract with the railroad.

Mr. STEVENS. Do you load the cars in the State of Michigan the same as you do in Georgia?

Mr. ROBBINS. In Michigan we superintend the loading, but do not actually handle the stuff with our own laborers. We have inspectors, but not the laborers.

Mr. STEVENS. Do you charge for the inspection?

Mr. ROBBINS. No, sir; that is not a loading charge, it is a part of our general expense of operating in Michigan. We had last year in Michigan, I think, 36 men, acting as inspectors.

Mr. STEVENS. How were they distributed—how many at Grand Rapids?

Mr. ROBBINS. Our man in charge of the district was at Grand Rapids, and probably one or two assistants, and possibly one or two inspectors.

Mr. STEVENS. How many at South Haven?

Mr. ROBBINS. I think one man.

Mr. STEVENS. How many at Matawan?

Mr. ROBBINS. I think one man. I could not give you offhand the exact distribution of these 36 men. I could get that for you if there is any particular point to it.

Mr. STEVENS. Yes; I wish you would. But so far as the shipper is concerned the expense of that service is included in the refrigeration service, is it?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is what I wanted to get at.

Mr. ROBBINS. The convenience of this in connection with that Michigan business is this. The grower will send a half a dozen teams, or a dozen teams, to a car to load it. His teamsters will do the manual work, but they do not understand how to load the stuff so that it will carry properly, and our men are on hand to superintend it. That has proven to be the most convenient and practical method in that particular locality.

Mr. STEVENS. Do you in your contract agree to hold the railroads harmless for your own lack of equipment and negligence in refrigeration and care? Would you state the aggregate amount of claims that you paid last year for this purpose?

Mr. ROBBINS. Well, I could only guess at that.

Mr. STEVENS. Just give it approximately.

Mr. ROBBINS. I would say \$25,000 or \$30,000. I might say that on this year's business we have got claims in hand now from one locality on about three days' business of \$20,000, where we had an ice house burned right in the midst of the season, and about 30 or 35 cars had no initial ice.

Mr. MANN. Where was that?

Mr. ROBBINS. In Idaho. We ice at Payette, Idaho.

Mr. MANN. What was the shipment there?

Mr. ROBBINS. Largely prunes, or plums. That is their principal product. They call them prunes when they are dried, I believe, and call them plums when they are green. They ship some pears from that locality, too; but mostly plums.

• Mr. STEVENS. What time of the year are your schedules for refrigeration prepared?

Mr. ROBBINS. Along in the spring.

Mr. STEVENS. About this time?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Who prepares them?

Mr. ROBBINS. They are prepared in my office, and I know about them in a general way.

Mr. STEVENS. Under your supervision?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Where do you send them?

Mr. ROBBINS. We send them to our district officers, to distribute among the shippers?

Mr. STEVENS. In what way can the shippers ascertain what these schedules are?

Mr. ROBBINS. Every shipper we know gets a tariff. We send him one voluntarily. If he does not get one, he can get one by applying either to the district office or to the home office. We print from 750 to 1,000 tariffs in almost every section, and they are distributed as

widely as possible. We have no reason for not distributing them. In fact, we try to do so.

Mr. STEVENS. Do you distribute them as a convenience to the shippers, and not because you are obliged to by law?

Mr. ROBBINS. That is correct. Mr. Fleming also reminds me that we furnish the initial railroad all the copies that they want and they send them to the local agent at each shipping point with instructions to apply them. So that in one sense they are on file at the shipping point, if anyone chooses to go to the railroad agent at the shipping point and ask for them. The agent there has a copy.

Mr. STEVENS. Do these schedules prescribe a maximum rate, or the absolute rate for use throughout the season?

Mr. ROBBINS. The absolute rate.

Mr. STEVENS. Is that adhered to strictly?

Mr. ROBBINS. Yes, sir; it is never advanced.

Mr. STEVENS. Is there ever a reduction?

Mr. ROBBINS. There is at times. This coming year we have three or four localities in mind where we will make some slight reduction.

Mr. STEVENS. Is that a public reduction or a preferential reduction to be covered in the tariff? Do all shippers who take advantage of that rate get the same treatment?

Mr. ROBBINS. Yes, sir; surely. As we get a little cheaper ice or the business increases in volume so that we can do it more cheaply per car we make a reduction.

Mr. MANN. I want to call your attention to the fact that the temperature at White River this morning was 15° below zero and down in the south in Texas it was 15° below freezing, and we ought to have ice cheap this coming season.

Mr. ROBBINS. The trouble is if the ice does form down in Texas there is no place to put it. But I assure you that they never have cut any ice in Texas.

Mr. STEVENS. The charge has been made that in that case before the Interstate Commerce Commission a Mr. Watson received a large sum annually in rebates from your concern. What truth is there in that?

Mr. ROBBINS. We paid that one company some rebates in California in early days the same as we did everybody else. But I think you have not touched on the real point there if you want me to suggest it.

Mr. STEVENS. You can state what you wish to about it.

Mr. ROBBINS. I assume that you are coming to it. We did make a loan once, or Mr. Armour did, to Mr. Watson, and at the time he failed that fact came out, and they have seen fit to construe that loan, which was made to him as a banker by the parent company, as a rebate, which it never was in any sense.

Mr. STEVENS. That was not a part, then, of the car-line refrigeration business?

Mr. ROBBINS. No, sir. The car line did not make the loan and had no connection with it.

Mr. STEVENS. And whatever rebates it made were paid in another way?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. In making rebates at that time you gave shippers about the same opportunity under similar conditions.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How long since you have ceased paying those rebates on the California business?

Mr. ROBBINS. Well, we have not paid what you might term rebates on the California business for a good many years. That is, adjustments are still made, such as I have explained, where cars are not fully iced at initial points. Those are still being made.

Mr. STEVENS. These gentlemen who were here the other day from Georgia testified as to the competition that existed there prior to the exclusive contracts. What other refrigerator lines operated in competition there?

Mr. ROBBINS. That referred to Georgia, I believe, in particular.

Mr. STEVENS. Yes, sir.

Mr. ROBBINS. There was what was known as the California Fruit Transportation Company, the American Refrigerator Transit Company, and ours, which would make three. Then I think there were two more, but I am not sure now which they were.

Mr. STEVENS. How are the rates as to refrigeration now; how do they stand now as compared to then?

Mr. ROBBINS. The rates when the five lines operated were \$90. When we made an exclusive arrangement it was a part of the agreement that we would reduce the rate to \$80, which we did. Since then we have voluntarily reduced it to \$68.55.

Mr. STEVENS. Have any of the connecting roads in the Georgia district attempted to do any business in their own refrigerating cars?

Mr. ROBBINS. I do not think so.

Mr. STEVENS. Have they any cars that are equipped for that sort of business?

Mr. ROBBINS. Well, I want to change that answer a little. I remember one year the Louisville and Nashville road did put in some of their cars into Georgia, particularly for the cantaloupe business, and I also remember equally well that they were entirely unable to get the contents of their cars through to destination in good condition, and after they had made a few shipments in those Louisville and Nashville cars they discarded them and took our cars.

Mr. STEVENS. Do you use any of your poorer equipment or older cars on that Georgia business?

Mr. ROBBINS. No, sir.

Mr. STEVENS. You use only your best?

Mr. ROBBINS. Yes, sir; that is a very hard business to handle. As I explained in my statement, the fruit cars that we had in the service previous to about six years ago have been taken out of the high-grade fruit and berry business and replaced with new and more modern cars. That is one reason why we have to figure a high depreciation on our cars. They do not become physically unfit to run over the roads, but they do become unfit for that high-grade business after about six or seven years.

Mr. STEVENS. I rather judged from what those gentlemen said the other day that some of them had shipped their peaches to Chicago in cattle cars.

Mr. ROBBINS. I do not know what you refer to.

Mr. STEVENS. They said that they sent the cheap peaches to Chicago.

Mr. ROBBINS. Well, it is harder sometimes to handle the cheap peaches than it is the good ones, so far as the refrigeration is concerned.

Mr. MANN. Why is it that they do not send more of their produce from the southeast, Florida and Georgia and down that way, up to Chicago?

Mr. ROBBINS. Because a great many of the commodities in question are supplied to Chicago from the West, from Texas or California or the western country. For instance, Florida has just now commenced to ship celery, and Chicago gets most of its celery from the Jackson district or from California, and it is difficult for Florida to compete in that market. Generally speaking it is because stuff of the same kind is put in there from other districts nearer to Chicago. They can do better from Florida to ship to New York and Boston.

Mr. MANN. Can you make as good time from Florida to Chicago as you can from Florida to New York?

Mr. ROBBINS. Generally speaking, yes, sir. The service is about equally good.

Mr. MANN. You have two lines of road running from Florida to New York, and four or five lines running from Florida to Chicago. Does not that make any difference?

Mr. ROBBINS. Practically speaking, I do not think it does, Mr. Mann. I think the train schedules are about as fast to the West as they are to the East.

Mr. MANN. That has not been my personal experience. I have been to Florida and have shipped stuff there a great many times.

Mr. ROBBINS. In carload lots?

Mr. MANN. Yes; in carload lots. It is harder to get a thing snipped from Florida to Chicago than it is from Florida to San Francisco.

Mr. ROBBINS. We do get stuff to Chicago from Florida all the time, more or less of it, and I am not aware of any serious defect in that service.

Mr. MANN. They may give you an extra good service.

Mr. ROBBINS. Of course perishable stuff gets preferred attention. Not in answer to any question, but if you would like to hear it I want to call your attention to this Delaware berry and peach business which originates on the Pennsylvania Railroad, a road which is supposed to be as strong as any on earth and able to build cars or do anything else that it wants to. They have a large line of their own refrigerators, several thousand cars, and when the berry and peach business in Delaware comes on they tell the people that they can have their cars if they want them, but they are not equipped to furnish ice, either initially or en route, and they have the choice of using the Pennsylvania cars with such icing facilities as they can rake and scrape together, or they can use our cars at our rates, and the result is that 99 per cent, at least, of that business, and I do not know but all of it, goes in private cars.

Mr. FLEMING. One hundred per cent of it does.

Mr. ROBBINS. One hundred per cent of it is shipped in private cars. Now, they can get Pennsylvania cars, but they do not want to look after the refrigeration themselves, and we charge them just as much as we do on any other business. That is simply another example of the desire of the shippers to use our service, regardless of what they can get from the railroads. It is not a question of rate entirely. They admit that if they could get the ice and attend to the work they could get their stuff to market more cheaply in the railroad cars, but they would not get the condition, and they realize perfectly well that by paying us \$5 or \$10 or \$15 more they may be able to save \$50 to \$100 on the product. That is the guiding principle, I say.

Mr. MANN. Now, you give that illustration of Delaware and the Pennsylvania Railroad. How about the Illinois Central Railroad?

Mr. ROBBINS. The Illinois Central furnish their own equipment almost entirely.

Mr. MANN. Is it satisfactory? Do they not carry a very large amount of refrigerated products?

Mr. ROBBINS. Yes, sir; and likewise the Santa Fe furnish their own cars. But both of those lines have established a sort of refrigeration bureau. In fact, I do not know but the Santa Fe is a separate company; it has been so claimed. And they do the business about as we do.

Mr. MANN. Are bananas shipped in refrigerator cars?

Mr. ROBBINS. They are shipped in refrigerators, generally, but not iced. The cars are run as ventilators until the temperature gets down to about 40°, and then the ventilators are closed. The banana will turn black if it is exposed to a temperature below 40°.

Mr. MANN. Of course the Illinois Central does an immense amount of that business.

Mr. ROBBINS. Yes, and we do some of it, too, from Mobile and New Orleans. We furnish more or less cars for that business.

Mr. MANN. I spoke of the Illinois Central because they have some special connections. We saw that as we came up from Panama.

Mr. ROBBINS. Of course the banana business runs the year around, and the Illinois Central, between their business in the North and in the South, have pretty much a year around business, which warrants their building and running their own equipment. The Santa Fe road is very much in the same fix. It is a long road, and with a greatly diversified business, and they can fairly afford to own their own equipment, although I got a letter within a day or two from our California office saying that the Santa Fe road was short of cars and that we had furnished them 180 within a few days.

Mr. MANN. Where you furnish the Santa Fe cars in that way, what is the arrangement?

Mr. ROBBINS. We get a mileage, and if the cars are iced we get the refrigeration. The refrigerating is done under our supervision.

Mr. MANN. Do you get the same mileage from the Santa Fe where you help them out as you do under an exclusive contract?

Mr. ROBBINS. Yes; of course we do not furnish them cars at all unless it is convenient to do so. We might have been short at the same time, and then we would simply have told them that we had no cars to offer and there would have been no recourse on us. Mr. Fleming reminds me that the Illinois Central in the early days offered their fruit cars in Georgia and the shippers there would not use them, although they are a pretty good car. But they are not up to our standard, and they had no organization there to look after them and ice them and reice them, and the loading was confined to western points by the Illinois Central Road.

Mr. MANN. The Illinois Central covers practically all of the strawberry and fruit section of southern Illinois, does it not? You have not all the fruit cars down there?

Mr. ROBBINS. They do most of it; yes, sir. But on one of the divisions of the Illinois Central last year the cantaloupe shippers, having about 200 or 300 cars of cantaloupes, selected our cars and requested the Illinois Central to use them for their business, and they were so used, and we refrigerated that business from the Illinois Central Road,

and we gave that service at a higher rate than the Illinois Central charged; and the same people have said, within a few weeks, that they wished to renew the same arrangement for another year.

Mr. STEVENS. In letting the Santa Fe road have cars under this system that you have just spoken of the charges for refrigeration would be made by the Santa Fe in that case?

Mr. ROBBINS. They would be collected by the Santa Fe, but for our account, and we would furnish and pay for the ice.

Mr. STEVENS. But you have no icing facilities or stations on the Santa Fe road?

Mr. ROBBINS. Not now; no, sir.

Mr. STEVENS. How would you furnish that service?

Mr. ROBBINS. We would furnish the ice from our own supply in southern California and get ice from them until the cars left the Santa Fe line.

Mr. STEVENS. You would have to perform all the service the same as on the Southern Pacific?

Mr. ROBBINS. Yes, sir.

Mr. MANN. How would it be possible for you to furnish service along the line of the Santa Fe?

Mr. ROBBINS. I say, along the Santa Fe we would get the ice from them.

Mr. MANN. They would put the ice in the cars for you?

Mr. ROBBINS. Yes, sir; we would pay them for it. And then, of course, when the cars left the line of the Santa Fe road we would take them up on our own account. In this connection, on the question of our charges, we operate in California in competition with the Santa Fe rates and in Texas with the A. R. T. Company, which is the company of the Gould lines, and from Colorado in competition with both lines, and our refrigeration rates are the same as theirs, and I maintain that we get just as much profit on that business as we do on any other business, indicating that with the railroad furnishing the cars it does not follow that shippers would get any cheaper rates. We claim, at least, that they would not get as good service.

Mr. STEVENS. Do your exclusive contracts with the other lines allow the Illinois Central or the Santa Fe cars to run over and be used on these lines?

Mr. ROBBINS. They would run over the line, certainly; but they could not be loaded at their stations with a particular kind of berries or fruit specified in our contract.

Mr. STEVENS. That is, if a shipper of the railroad wanted Santa Fe or Illinois Central cars, he could not get them?

Mr. ROBBINS. No, sir.

Mr. STEVENS. But if a car was presented for running over the line it would not come within your contract?

Mr. ROBBINS. It would not interfere with it at all. The contract simply provides that our cars shall be used exclusively for certain kinds of business named originating on their lines, generally berries and fruit.

Mr. MANN. That is, the traffic originating on the line must go in your cars?

Mr. ROBBINS. Yes, sir. And I do not know whether it came up while Mr. Mann was out of the room, but there is a special reason for that.

Mr. MANN. I can see what the special reason is for it.

Mr. ROBBINS. Yes, sir; there is one.

Mr. STEVENS. The claim was made that you were compelled to reduce your refrigeration charges in Georgia owing to the fact that the prices were so low for the crop that it was necessary to reduce the charges in order to move the crop. Was that the reason?

Mr. ROBBINS. That would simply have some bearing on it. If we thought that the community was suffering and we could afford to bear a part of the burden, I think that we would be inclined to do so. Our people are charitable people.

Mr. STEVENS. You are running your line on that basis?

Mr. ROBBINS. No, sir; that is simply a side reason.

Mr. MANN. If you thought that crops would not move unless you would reduce the rate and you could reduce the rate without cost, you would naturally be forced to do so.

Mr. ROBBINS. The crop would have moved just the same, whether we charged \$80 or \$88.75. I do not think it would have made any difference whatever.

Mr. STEVENS. You stated this morning why you raised the refrigeration price in Michigan after you had exclusive contracts.

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. What other companies were doing business in California just before you made exclusive contracts there?

Mr. ROBBINS. The California Fruit Transportation Company, the Continental Fruit Express, the Goodell Refrigerator Line, which was owned by the Northwestern Railway, and one or two other lines, the names of which I do not recollect at the moment.

Mr. STEVENS. Most of your cars in use are on the mileage basis, are they not? You depend for your compensation on the mileage?

Mr. ROBBINS. For the use of the cars on mileage.

Mr. STEVENS. On what proportion of cars do you depend on getting refrigerator charges for your car profit?

Mr. ROBBINS. The fruit cars in particular?

Mr. STEVENS. There are 8,000 of them?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. The mileage of those cars, as I take it from your testimony, pays only expenses and depreciation and interest?

Mr. ROBBINS. Yes, sir; but I put it the other way. The mileage alone on these cars does not provide a sufficient remuneration for a profit, because of the fact that they are out of service between the fruit seasons. There is also much delay to them in awaiting loading in the season. We can not run the cars into a territory just as they want them, but sometimes a great many hundred cars are there for a week, or sometimes as much as a month in advance of the movement, and since the North Carolina strawberries have become a prominent crop, about 3,000 cars come out of there in a month, and we can not get those cars in in that short period, and we commence to park cars there a month ahead.

Mr. MANN. That is, the cars are taken from all the roads and stored there?

Mr. ROBBINS. Yes, sir.

Mr. MANN. And you do not dare to wait and have faith that you can run a train of cars right through and drop it off where you need it?

Mr. ROBBINS. We haven't them available in this part of the country on short notice. We have to begin to pick cars off that come into the East to get the number required into the territory before the season is over.

Mr. MANN. Where do you keep these cars stored when they are not in use?

Mr. ROBBINS. We have a large storage yard of our own in Chicago, one in Kansas City, and one in Omaha, and then we have storage yards in some of these loading localities. For instance, if we have idle cars and they are going to be needed next in California, we drift them along and let them wait, sometimes in our own yards and sometimes in the railroad yards. It is the most convenient way to handle them.

Mr. MANN. Do you have to pay any storage for them if they are in a railroad yard?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Whom do the Hoster refrigerator cars belong to?

Mr. ROBBINS. That is a line of beer cars and the cars belong to us.

Mr. STEVENS. And how about the Plankinton company?

Mr. ROBBINS. We had some cars in that service, but we have not any now.

Mr. STEVENS. You have not now?

Mr. ROBBINS. No, sir.

Mr. STEVENS. Then how about the Barbarossa refrigerator line?

Mr. ROBBINS. That is a line of cars that belong to us. I might explain in regard to those cars. They are fruit cars or beef cars that are more than six or eight years old and are not considered suitable any more for that business. We take out the tanks and paint them up to suit these brewers, and lease them to them.

Mr. STEVENS. On an annual lease or a mileage basis?

Mr. ROBBINS. Generally on a monthly basis.

Mr. STEVENS. That is a special contract with the brewing company?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. How about the Dubuque Refrigerator Car Company?

Mr. ROBBINS. That is another beer line belonging to us.

Mr. STEVENS. And the Heintz Pickle Company?

Mr. ROBBINS. That is a pickle line belonging to us.

Mr. STEVENS. You have quite a number of those?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. Are these all included in that number that you gave this morning?

Mr. ROBBINS. Yes, sir.

Mr. STEVENS. That is all that I have to ask now. I trust that you will furnish that information in such shape as you see fit to, and as much of it as you see fit. The committee will be very glad to have it.

Mr. ROBBINS. All right, sir.

Mr. STEVENS. We have asked of Mr. Robbins, Mr. Mann, information as to the capitalization and earnings, mileage earnings, expenses, and matters of that sort, which he declined to give us, I regret to say, on the ground that they were his private business, and the committee requested me to ask of him what I have just asked, so that those matters would be a matter of record.

Mr. ROBBINS. If you will allow me to explain for Mr. Mann's benefit: I said in that connection that while we might have no objec-

tion to furnishing this committee some information on that line, if it should be confined to the committee and not go out to the public, I thought that we might be inclined to do it; but I am sorry to say that we have some enemies and I do not think it is right for us to submit the results of our private business to public scrutiny, for business reasons. I think anybody would feel the same way about it.

Mr. MANN. Is not the information that we ask for given in all of your annual reports?

Mr. ROBBINS. No, sir; we do not make any.

Mr. MANN. What?

Mr. ROBBINS. We do not make any.

Mr. MANN. Have you any stockholders?

Mr. ROBBINS. Yes, sir; but it is a close corporation, and they are all in the family; and, as I explained, so far as any earnings and dividends are concerned, every year we put back into the business more than we make out of it. It has been a growing business, and the equipment has had to be largely increased and it has taken a great deal of money, and in one sense there have been no dividends, and I do not see how there are going to be for the present. We are putting more in the business all the time.

Mr. MANN. Do you have any bonded indebtedness?

Mr. ROBBINS. Yes, sir; we have a small capitalization and a large debt. We borrow money from our own people.

Mr. MANN. Where you have gone into the refrigeration of fruit, in localities like Georgia and Florida and Michigan, what has been the tendency with regard to growth of the business?

Mr. ROBBINS. It has grown very rapidly. When we commenced to do business in Georgia under the exclusive contract, I think we had 500 or 1,000 cars. How many did you say we had the first year, Mr. Fleming?

Mr. FLEMING. In 1898?

Mr. ROBBINS. Yes.

Mr. FLEMING. That was the big year until last year. We jumped right into that the first year.

Mr. ROBBINS. Yes; last year it was up to 5,000 cars.

Mr. FLEMING. The acreage in fruit has been increasing.

Mr. ROBBINS. The gentleman testified here the other day that under favorable conditions next year there would be from 6,000 to 8,000 cars out of Georgia, and the strawberry business of North Carolina is the same way. We started in there five years ago, I think, and there were about 700 or 800 cars, and this last year there were 2,300 or 2,400 cars over the Atlantic Coast Line alone, and about 300 cars over the Seaboard Air Line. The business has been increasing very fast.

Mr. STEVENS. The business has not been increasing that way in Michigan?

Mr. ROBBINS. It has not been increasing very much.

Mr. MANN. There was a very large increase of shipments, according to Mr. Ferguson, by car.

Mr. STEVENS. It was not delivered outside to connecting lines.

Mr. MANN. I think the chairman of the subcommittee is mistaken about that.

Mr. ROBBINS. Michigan is an old district and has not increased with the leaps and bounds with which these two outside districts have increased.

Mr. MANN. In Michigan in 1900, according to Mr. Ferguson, the total number of cars shipped was 4,360.

Mr. ROBBINS. That was on the Pere Marquette line alone.

Mr. MANN. And in 1903 that number had grown to 7,825.

Mr. STEVENS. Now, look at the number outside of the State.

Mr. MANN. The number of interstate cars, under refrigeration, in 1900 was 1,435, as against 1,632 in 1903. But Mr. Ferguson figured that the interstate traffic did not include shipments to Chicago. Now, the Pere Marquette Railroad did not run into Chicago at all at that time, and Chicago is interstate traffic. So that his statement on that was like some of his other statements, slightly erroneous.

Mr. STEVENS. I had in mind that the number of cars shipped in interstate traffic was not very much increased.

Mr. MANN. According to your judgment, the tendency is to build up the business?

Mr. ROBBINS. Decidedly.

Mr. MANN. Where you go in and furnish the facilities for shipment?

Mr. ROBBINS. Decidedly. In all large districts where we operate the business has doubled and trebled and quadrupled.

Mr. MANN. You speak of the large increase. What facilities do you furnish in districts where the shipments are smaller?

Mr. ROBBINS. We take care of almost any business offered to us if it is offered to us in time so that we can provide equipment for it.

Mr. MANN. Supposing a community wants to ship vegetables from Arkansas where vegetables have not been shipped from prior to that time; how would they get into communication with you or some other car line?

Mr. ROBBINS. The way it generally comes up is that the shippers take it up with the railroads or with our representatives, or the railroads bring it to us, or our district men. I call your attention to a case that came up before us a month ago. There is a little new road built down near Corpus Christi, Tex., where we are going to have about 50 cars of cabbages. We never shipped a car there before. That is a new thing down there, and there is no road there that has the means of taking care of it. They offered it to us at the eleventh hour, and we told them that we would take care of it if we could get ice anywhere within 200 miles.

Mr. MANN. Do you ice cabbages?

Mr. ROBBINS. Yes, sir; generally we do not, but these cabbages shipped at that time of the year from down there we are going to ice.

Mr. MANN. What do you do about shipments from Florida? They used to raise a great many strawberries and bring them from Florida. Most of those growers went out of business fifteen year ago because, I suppose, the Armour car line was not in existence there at that time, or anything like it. How about that?

Mr. ROBBINS. Our Florida man is right here, if you care to hear very much detail about that Florida business. But in a general way our Florida business has doubled and trebled within the last few years. Up to the time of this freeze, two weeks ago, we were getting from 20 to 25 cars a day of lettuce alone out of there. Of course that cold weather put that back again. The strawberry business from there has been increasing very rapidly, and Mr. Fleming just called my attention to the fact that the first year or two we operated in Florida

we had what he calls "red ink figures." That is, we did not come out even on the business. We worked along on the business that way until it grew to a sufficient volume so that it has paid us something.

Mr. MANN. I can remember when I first commenced to visit in Florida, around Palatka, one winter they raised immense quantities of strawberries and other small fruits. They quit because they paid high express charges to get their fruits to the markets, and when it got to the markets it was spoiled, and of course it did not take many seasons of that to take the ardor and enthusiasm out of the people.

Mr. ROBBINS. Our business in Florida for the last few years has increased decidedly and every year, I think without exception, until we are doing a very nice Florida business now.

Mr. STEVENS. Has your Pacific coast business increased?

Mr. ROBBINS. Yes, sir; very much.

Mr. MANN. You spoke of Idaho a while ago.

Mr. ROBBINS. We started there a few years ago with nothing, and I think now that business runs up to 600 or 800 cars a year.

Mr. STEVENS. How about Colorado, has it been increasing there?

Mr. ROBBINS. Colorado has had a decided increase in the peach business. From the Grand Junction section, I think last year we handled 400 or 500 carloads, where a few years ago there were none at all.

Mr. STEVENS. Do you handle the melon business?

Mr. ROBBINS. No, sir. The center of that is Rocky Ford, a local point on the Santa Fe, and they handle their own business.

Mr. STEVENS. How are watermelons shipped?

Mr. ROBBINS. In stock cars, and the more air they can get the more they like it. My attention is called to the fact that people of northern Florida are beginning to plant peaches.

Mr. MANN. Oh, they began years ago. I have an orchard in Florida that is 20 years old, and the peaches rot on the ground every year.

Mr. ROBBINS. We are figuring on quite a large business out of there.

Mr. STEVENS. Where do you send them to?

Mr. ROBBINS. To New York and Boston.

Mr. FLEMING. They are the first peaches in the market here?

Mr. MANN. Yes; they are very high priced, and they are very fine peaches. How about northern Alabama? That is getting to be quite a fruit country.

Mr. ROBBINS. We handle a few peaches off of the Louisville and Nashville. We furnish cars for all the Louisville and Nashville peach and berry business. They have a number of different sections, some of them in Alabama, and some in Tennessee.

By the way, the Louisville and Nashville built a thousand cars some six or eight years ago to handle that business, and they did handle it in a way; but a few years ago they offered all the business to us and we are taking care of it.

(Thereupon, at 3.50 o'clock p. m., the committee adjourned.)

THURSDAY, *February 16, 1905.*

The subcommittee was called to order at 2.20 o'clock p. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF THOMAS B. FELDER, JR.

Mr. SHACKLEFORD. You may proceed, Mr. Felder. State your name and whom you represent.

Mr. FELDER. I practice law in the city of Atlanta and am engaged, to some extent, in agriculture in the State of Georgia and in the State of Indiana. By way of preface, I desire to disclose my relation to the subject-matter under discussion. I have, for quite a number of years, represented the Armour interests as attorney in Georgia.

Mr. SHACKLEFORD. The Armour Packing Company?

Mr. FELDER. The various Armour interests. There are several corporations and I represent them in their litigations. I appear here, however, in behalf of several very prominent peach growers in the State of Georgia, who requested me to come on and call to the attention of the committee, as to this Stevens bill under consideration in the House, and the Elkins bill under consideration in the Senate, the particular way in which these measures, if enacted into law, will, in their judgment, affect the peach and vegetable industry in the South. I have been here for two or three weeks, and before coming I took occasion to investigate this question very thoroughly and I find that, so far as the producer of peaches and vegetables is concerned, and so far as the consumer is concerned, and so far as the transportation lines are concerned, everybody seems to be satisfied.

In other words, we occupy very much the position of the old negro woman who died in Georgia, and when it was asked what the complaint was it was said that there was no complaint, everybody seemed to be satisfied. Since my arrival in the city of Washington I find that there is some complaint, and the complaint is quite general; and it comes from the middle man, who is known as the commission merchant or broker. These middle men, until the present system was brought in vogue, have lived as parasites upon this industry, and whatever else may be said in regard to the present system of private car lines, I think we can claim with confidence that the car lines have assisted much in regulating this parasite or barnacle that had fed upon the peach growers and fruit growers from the South since the business began.

Now, gentlemen, I propose to lay down two propositions. First, that the Federal Congress, under the method pursued by the private car lines, has no jurisdiction whatever over the subject-matter. The fact that the Federal Congress has a right to regulate interstate commerce must be conceded; but under the contracts, exclusive or otherwise, made between the car companies and the railroad, they are not only not engaged in interstate commerce, but they are not the agencies of interstate commerce, and they do none of the things that constitute interstate commerce.

Mr. SHACKLEFORD. How would they be affected if you should require that railroads themselves should furnish refrigerator cars and other improvements?

Mr. FELDER. I want to say that a great many gentlemen have testified here and announced that they did not want to be interrupted until they had gotten through. I will say, however, that I want to be interrupted at any time, and I am glad that I will have a chance to answer that question. It is not contemplated by this bill that each railroad shall furnish these refrigerator cars and the icing.

Mr. SHACKLEFORD. I understood it was. I understood that it shall be the duty of every carrier to furnish every means and facility for the shipper, every requisite for the safety and preservation of fruit and such products in transit.

Mr. FELDER. I have not so read the bill. My understanding is that the provisions of this bill declare that those people who are engaged in furnishing private car lines, common carriers, are put under the interstate-commerce act; and there is a provision that they shall not charge more for their cars than is charged upon the interchange of cars between railroads.

Mr. STEVENS. That is correct.

Mr. SHACKLEFORD. Is not there a clause that there shall be an obligation upon the part of the car company to provide for the safety and preservation of the products?

Mr. FELDER. There was a man appeared here by the name of Mr. Ferguson, and when I saw him appearing in the Senate committee I thought he was a Senator. He has consumed about all the time in the House and the Senate committees—if the passage of this bill will afford no remedy, you ought to go a step further. There is a law requiring every railroad in the country to furnish its own equipment.

Mr. STEVENS. Before you leave that you will consider the second section of the bill, will you not, providing that all instrumentalities of transportation like refrigeration shall be considered a part of the contract with the carrier—

Mr. FELDER. Yes, sir; I will do that. Now, I want to state this. This gentleman states somewhere that he was simply loaded down with petitions, and from the number of petitions that he has received addressed to this committee and to Congress, the lower House and the Senate, it was sufficient almost to make him bow-legged if he carried them about the corridors from one committee room to another. I don't know how these petition purposes operate in this country, but we have a notable example in the efficacy of popular petitions in our State. I think it occurred in the town of Mr. Adamson, where every man, woman, and child petitioned the mayor and the council to build a shed to protect the sundial from the rays of the sun. It is a matter of common knowledge that you can get petitions signed to do anything and by anybody.

Now, let us see. Suppose each railroad in the United States should be required to furnish this equipment. Let us assume that you should pass an act, as suggested by the chairman, who has just retired, requiring each railroad to furnish refrigeration and all of the incidentals to the transportation of fruit and vegetables. Now, I don't know how it may be in the chairman's district and in the chairman's State, but we have some railroads that you could probably denominate monopolies in the State of Georgia. For instance, you take the Lexington Terminal, a road that is officered and owned by the Congressman from that district and by a lawyer residing in the city of Lexington, namely, Judge MacWhorter. That road is 4 miles in length.

It originates in the city of Crawford, a city of probably 250 inhabitants, and it runs to Lexington.

The price that you would have to pay for the building of that road, the engines, and all the equipment is about the price of two or three of these private cars. Now, I am told that of peaches, watermelons, and vegetables, at least four or five hundred carloads originate and are transported over that line of road. If you should string along on that road one car after another you could not put all the cars on the Lexington Terminal Railroad that you use in the average crop season, one behind the other. Now, let us take the road from Perry to Fort Valley. They handle during the six weeks of harvesting period of peaches something like five or six hundred or maybe a thousand cars. If the Congress of the United States should require that little road of that length, costing possibly \$2,500 or \$3,000, to equip itself with refrigerator cars costing \$1,000 or \$1,200 to build, you would effectually put that little road out of business. Now, let us go to a larger system. Nearly all of the peach business in my State, nearly all of the vegetable business in the State of Georgia, originates along the line of the Central Railroad and Banking Company—I think that is the road.

Mr. ADAMSON. I think the great majority of it does.

Mr. FELDER. Yes. The Central Railroad and Banking Company has, including its branches, something like fifteen hundred miles of road. The road ramifies all of south Georgia and a portion of eastern Alabama. Now, the statistics show that that road carried during the year of 1904 between 2,000 and 3,000 carloads of peaches to market; that those peaches were gathered and loaded and placed and hauled and sold within the period of six weeks; that it took to carry the peach crop alone—that does not include celery, cabbages, watermelons, and various other things produced and shipped—it took 4,000 cars, and 4,000 cars, costing \$1,200 apiece, would be \$4,800,000. The Central Railroad and Banking Company, as I am informed, is stocked and bonded for \$15,000,000, and the people of my State and section complain that it is full of water; that is the usual complaint.

Whenever a case is tried before the Railroad Commission, and the railroad makes answer that that is its bonded debt, the people make replication that they ought not to have any such bonded indebtedness, that \$15,000,000 is out of all proportion to the value of the road and its equipment. However that may be, I am not advised.

Now, then, this Congress proposes to add to that ten or fifteen million dollars in furnishing this special line of cars for carrying the crop of the State of Georgia, cars to the value of several million. When they are furnished, when this additional burden is placed upon the Central Railroad and Banking Company, you require them to add almost a third of the whole value of the road and equipment to carry the peach crop of the State of Georgia.

Mr. SHACKLEFORD. Why not get those cars by arrangement with other car lines that do not need them at that particular season of the year, and would need them at another season?

Mr. FELDER. I presume some such arrangement could be made, but if that arrangement was made they would have to pay rent for them.

Mr. SHACKLEFORD. Would that bring out in the Commission—

Mr. FELDER. We don't want it under the Commission.

Mr. SHACKLEFORD. Some do.

Mr. FELDER. Nobody in our country wants it under the Commission. I would like to ask what class wants it under the Commission.

Mr. SHACKLEFORD. The consumers do, I think.

Mr. FELDER. Mr. Ferguson stated before this committee that the producers of this country wanted it under the Commission, because the Armour people were engaged in buying and selling produce in competition with the farmers. No such thing has existed and could not exist for about two years—

Mr. ADAMSON. How is that shipment handled when it gets to its destination; do the brokers handle it?

Mr. FELDER. No, sir.

Mr. ADAMSON. As soon as your people have quit dealing in it?

Mr. FELDER. You take the California fruit, it is auctioned off in the market. You take the peaches—

Mr. ADAMSON. Who does that?

Mr. FELDER. They are sold before they are shipped, just like cotton, to factories and other things.

Mr. ADAMSON. Sold at auction before they are shipped?

Mr. FELDER. My information is that the California fruit is sold at auction when it reaches New York.

Mr. SHACKLEFORD. Sold like shipments of cattle or hogs.

Mr. ADAMSON. Do your people have anything to do with it?

Mr. FELDER. Not a thing on earth.

Mr. ADAMSON. Is there any other line that is now equipped with enough cars to handle the peach crop?

Mr. FELDER. No, sir; there never will be.

Mr. ADAMSON. Suppose you are not allowed to make exclusive contracts; do you not think others might grow?

Mr. FELDER. There are others. There are nearly five hundred private car lines doing business in the United States, and many other car lines are engaged in carrying peaches, fruits, and other things, just as we carry them. This talk about exclusive cars that you are in possession of is all rot. What are the facts about it? A railroad has not the equipment to carry this fruit, and they, in some cases, advertise for bids from the various car lines engaged in this business. If they do not, they go about and see every large shipper, and they will go out and find out upon what basis contracts will be made.

Mr. ADAMSON. I know how difficult all these matters are that you are talking about. There is one factor in this problem which nobody has mentioned in connection with your statement of these difficulties and expenses of transportation. I wish you would tell us something about the value of a carload of peaches that you would send to New York in good condition, if you can.

Mr. FELDER. The average value of peaches delivered in New York in prime condition is about \$1,200 a car. The freight and icing is about \$270, and there is no other expense connected with it. The Armour Car Line furnish men who go and properly strip and load the peaches in the cars. Then, if there is inspection, they send an inspector to New York who inspects the peaches when they arrive, with the result that the conditions that obtained prior to the so-called exclusive contracts that the Armour people have made and what obtains now were very much different. The fruit and vegetable producers of the country, the farmers, were at the mercy of every man who has come up here on this agitation, and he was at his mercy in this way—

Mr. ADAMSON. I know there used to be a great many shipments of peaches and watermelons by farmers who said that they had to make remittances——

Mr. FELDER. Precisely, and the reason for it is known of all men who have studied this question.

Mr. ADAMSON. In your statement of figures the entire expense of icing, preserving, and putting a carload of peaches in New York in good condition does not amount to 25 per cent of its value.

Mr. FELDER. Not at all, only the largest producer.

Mr. RICHARDSON. I am not a member of this committee, but I would like to ask a question.

Mr. SHACKLEFORD. You are at liberty, Mr. Richardson.

Mr. RICHARDSON. How long has it been since the Armour Company commenced the fruit business in the State of Georgia?

Mr. FELDER. Since 1898.

Mr. RICHARDSON. What were the shipments the first year that they did business?

Mr. FELDER. I have all that tabulated and I will put it in.

Mr. RICHARDSON. Well, about what was the shipment?

Mr. FELDER. Well, I would just as soon put it in now as later. I call the attention of the committee to the marvelous showing made——

Mr. RICHARDSON. That is what I want to know, and the growth and the increase of the business.

Mr. FELDER. I will take that up; it is not very voluminous. Take the State of Florida. Many years ago the State of Florida produced a large volume of vegetables which they sent by express to commission merchants, the farmer having no tab on it, and they would write back that the stuff had come in defective condition, not saleable or marketable, and to send money along to pay the freight——

Mr. RICHARDSON. Right there in connection with the initiative steps of developing the fruit trade in Georgia. Do you not lose money?

Mr. FELDER. Yes, sir; and last year was the first year, for a year or two, so I am informed, that they ever made a dollar in Georgia since 1898. They were petitioned to come to Florida with their crop. They had been doing business two or three years in Florida, developing the vegetable business, and restoring it to its pristine condition, the condition that obtained some years ago.

They have lost money every year. With the great development in the State of Florida for the past several years the very best we hoped to do, up to a couple of years ago, was to come out even. I was amazed myself at these figures. They are absolutely accurate, and I submit them. Now, in the State of Florida the growth of shipments of lettuce, celery, beans, peas, and cucumbers in the last six years from the Manatee River, the district where it is grown, Tampa, Sanford, Gainesville, that district is from 100 cars to 800 cars this season, shipped to the markets covering the East, West, and Middle West. This is the condition in the State of Florida as we found it. They were shipping less than a hundred cars when we took the contract in the State of Florida, and to-day we are shipping, this year, 800 cars, or an increase in the last three or four years of 700 cars.

I had the pleasure of meeting Captain Garner, who operates a lot of boat lines in the Manatee River section, and he and I discussed this matter with Captain Lamar, a member of this committee. He said that some years ago his boats got that business, but now he gets none

of it, yet that country has developed to such an extent, and there has been such an era of prosperity encouraged there by reason of the facilities furnished by the Armour car lines in the transportation of their products to market, that I am perfectly willing to lose the trade. Captain Lamar, myself, because I am a patriot, and I want to see these general prosperous conditions continue to exist. Take cantaloupes: in seven years, from nothing, in that climate and soil, which is particularly productive of that vegetable or fruit, the prospective shipments this year out of the State of Florida, in cantaloupes alone, will be 1,000 cars, and I am informed that they are worth from fourteen to sixteen hundred dollars a car.

MR. ADAMSON. Does it cost any more to transport a carload of cantaloupes than peaches?

MR. FELDER. As much.

MR. ADAMSON. I did not mean the quantity, but the comparative expense.

MR. FELDER. About the same.

MR. ADAMSON. How is the freight; is it more for greater distances?

MR. FELDER. Up to five years ago there was not a peach shipped out of the State of Florida, and not until within a comparatively short time—within the last ten years—were peaches considered adapted to that soil and climate. Now, four years ago there were no peaches shipped, and all the peaches were used in home consumption. During the last eight years there were 800 acres planted in the State of Florida, and about 150 cars will be this year shipped out in refrigerator cars. The acreage is being very largely increased every year because it is a profitable business.

Now I come to my own State. In reference to the statistics, I am sorry to say that we have been unable to get any reports whatever from the Agricultural Department—the National Agricultural Department—of this very large and growing industry in the South. These reports are taken from the various agricultural departments of the South.

MR. ADAMSON. On your division of profits, you say it costs \$270 a car from Georgia to New York, including the icing, storage, and freight?

MR. FELDER. The whole charges.

MR. ADAMSON. How much do you get and how much does the railroad get?

MR. FELDER. I was coming to that later, but I will answer that question now, because it is vital in this hearing. There were half a dozen car lines competing for the business in Georgia, and there was the sharpest sort of competition. They had their agents there going everywhere soliciting business year after year, and they charged \$1⁰⁰ a car for the icing. The first year after the Armour car lines made these exclusive contracts with the Central Railroad and Banking Company, the icing was reduced to \$80 a car, and as the business developed they reduced it to \$68.50 a car. There has been no complaint about the railroads, and they are perfectly satisfied with both of the services—

MR. ADAMSON. Do you mean to say that the railroad gets \$200 out of a car, and you only get \$68.50?

MR. FELDER. I think that the record will show—I have not prepared myself as thoroughly as the witnesses who testified. My recol-

lection is that the whole cost was \$270 for a carload of peaches from the peach-growing country to New York. We get \$68.50. Now, I submit, in that connection, that while on the face of the returns, so to speak, it would appear that the Armour Car Lines are making money—marbles and chalk out of this business—yet they are putting everything that they can rake and scrape into betterments and improvements, and they are declaring no dividends; and the chances are that they will not declare any for some years to come, for the reason that this scientific way of handling these products is in its infancy.

I submit that instead of this walking delagate, this man Ferguson, charging J. Ogden Armour with being an extortionist, as he has charged here recently, he ought to say of him, and about him, and to him, that he is a patriot; that he is doing more to develop the South than any fifty men in it, and I will show you that he is. This refrigerator car proposition is in its infancy. About the time that we get one system of cars built, and the ice bunkers in as they should be, some inventive genius comes along and makes an improvement both upon the length of the car and the height of the car and its width, and the ice bunkers, and all that stuff is turned out, and some of the cars that are not adapted to the uses to which they were intended are converted into cheaper cars, cheaper carriers, to haul beer, or some other of the private-car products.

After the expenditure of some \$15,000,000 in keeping these cars to do this precise business, he is confronted to-day with this serious proposition: He has got a magnificent line of cars, and the only perfected line in the world; some man has come to Washington and obtained a patent for a rarified air refrigerator car, and the general thought is that it is going to be successful. Of course, if it is successful Armour has got to buy it, and if he does buy it he has got to lose, I believe the testimony shows, the million dollars invested in ice plants and \$14,000,000 in cars. Now, he has his investment of \$14,000,000 that has been going into this enterprise year after year and it will be practically annihilated if he goes to this new system. That is a complete answer to this fol-de-rol about robbing the people and high prices and all that sort of thing.

Now I come back to the evolution of this industry under this horrible monopoly that you have been hearing about here; these exclusive contracts that have been exciting everybody in the country from the walking delegate to the occupant of The White House. Now, Georgia has been going along from year to year in a precarious way—has been growing peaches for fifteen or twenty years. On account of the fact that I am a widower I don't want to state my real age, but during my boyhood, which was a few years ago, the peaches that were grown in the State of Georgia that were not used by the servants and by the children and the family were all wasted. A little later on they were considered quite saleable, and it appeared that there was a profit in the production of peaches, so the result was that they got baskets and used to ship them out in baskets, and began to ship to longer distances each year, so that the industry was profitable. But it was not until 1898 that anything like a profitable peach crop was ever raised in the State of Georgia and put in the market.

In the year 1898 the high-water mark in the peach industry up to that time was reached, with every private car line with solicitors around through the country soliciting car loads of peaches, with their

cars iced, and all that sort of thing, and we find this condition: That year there were 1,800 carloads of peaches shipped. Mr. Hale, who is a millionaire, the largest peach grower in the world, from Fort Valley, Ga., stated to this committee a few days ago that the peach has got to be shipped the day it is gathered. One day he would have a surplus of cars, and the next day he would have his peaches gathered and could not get a car. One week they would have ice and the next week none, and therefore a large proportion of the peaches would rot in transit. They would load up one of those cars or two or a dozen and start them off full of ice, and before they got to the market the ice would evaporate and the peaches would be destroyed. He went on to explain how these private cars were run on side tracks right into where the trees were. The crates are put in by the Armour people, are nailed down, and run out on the side track and iced.

In order to handle this peach crop in Georgia and the vegetable crop in Florida and the crop in Alabama, they begin at intervals in the 900 to 1,000 miles from there to market and invest a million dollars in ice houses, in ice where these cars are sidetracked, and reiced from State to State from the initial point until the market is reached, with the result that there is no decay, and the peach arrives in a luscious condition, a state of complete preservation, and brings the very highest market price. Now, I say, before this exclusive contract was made, this grinding monopoly that is strangling this industry, and at a time when every car line in the country was competing for the business, the high-water mark was 1,800 carloads of peaches, as against 5,000 cars on the lines of road that I have mentioned; and as testified by Mr. Hale, when he was on the stand, 8,000 cars the present year.

This freeze has not killed the peaches, and with a propitious season from now on the additional acreage—this thing has grown by reason of this monopoly that you are seeking to strangle from 1,800 cars at \$1,000 a car, which would be \$1,800,000, up to 8,000 cars, the present year, or \$9,700,000, one tenth of the value of the entire cotton crop of the State of Georgia. It is unnecessary for me to state to you, the members of this committee present, that if you get one crop in five it is more profitable than the cotton crop. Of course that fact is not understood by members of this committee who do not live in a cotton-producing country. But it is a fact universally known; it is known in my State and everywhere else where any account is taken of this industry, that every man engaged in it is either rich or growing so just as rapidly as it is possible to grow.

For the sake of getting it in the record, I want to take up—in passing I desire to say that does not include the vegetables of all kinds produced in that section and shipped. Now there is a district with Chattanooga as a center—of course it is very well known that north Georgia is a mountainous country and the climate and soil is, while also well adapted to peach growing, particularly adapted to other fruits and berries. Take Chattanooga as a center, within a radius of 40 or 50 miles in each direction; that is known as a berry country, and the development in berries, of the most luscious kind to be found in the world, within the last few years has been magical, and that industry has grown from a mere trifle to amazing and astounding proportions.

MR. ADAMSON. What about pears? Is the pear crop big enough down there to give you any attention?

Mr. FELDER. It is beginning to be.

Mr. ADAMSON. Is it as difficult to ice and to save as peaches are?

Mr. FELDER. I understand not quite so much so.

Now the Armour car line started in the berry business about Chattanooga five years ago. They ran out a line for several years, and have figured their loss on the cost of cars and the cost of employees that they had, making no allowance whatever for changes in patents and changes of the kind that I have referred to, and last year from this neighborhood, from this district, they handled 500 carloads of berries. That comes along, as Judge Adamson knows—as you know, being from Alabama, Mr. Richardson—the northern tier of counties, where peaches do not flourish as they do in Georgia. These berries are berries that we handle in carload lots, and in this statement is not included the berries shipped by express and consumed in the home market. Those berries are shipped in carload lots and to a far-away market. I have not got the price of those berries; have not got it stated here. Take South Carolina peaches and canteloupes; the shipments have grown from nothing to about 600 cars per annum.

In North Carolina, which is a big berry producing country, and ranks in the production of berries just as Georgia does in peaches, stands No. 1 on the list. In twelve years, from nothing, to three thousand cars per annum. Now ten years ago Chadbourn, N. C., did not ship a carload, and to-day it is the largest berry-shipping point in the United States.

Mr. ADAMSON. I understand that there are two points connected with your car service that you claim justify any charge made either against you or the railroads; the first is that it is perishable fruit that has to go at first-class rates right through; and in the second place the fruit is not able to stand it, and they would lose more; and in the third place you have cars that you can transfer from one part of the country to the other and keep them busy all the time, and the railroad company owning them could not do that.

Mr. FELDER. That has been enlarged upon to such an extent that I have not discussed that matter. As I have stated, the peaches must be gathered and marketed—the whole crop—within six weeks. Last year, in gathering the crop during that time alone, in the State of Georgia, we used cars that were worth over \$4,000,000; and besides that, no railroad could put that amount of money in rolling stock that would cost that much to be run for six weeks in the year. Now, in the testimony in the case, it is claimed that these cars can not be used for any other purpose. They occasionally might put some light boxes of dry goods in these cars, but if almost any other character of freight is transported in the cars the fruit and vegetables become tainted with the odor and the peaches will taste; and if the goods are shipped in white pine—

Mr. ADAMSON. All of that would be a lower classification of freight anyway.

Mr. FELDER. Precisely.

Mr. RICHARDSON. Now, as I understand it, you say that on a shipment of peaches from Georgia to New York the charges are about \$270?

Mr. FELDER. That is as I recollect the testimony.

Mr. RICHARDSON. And the Armour charges amount to about \$68.50?

Mr. FELDER. It has been reduced from \$100 since we have had the so-called monopoly.

Mr. RICHARDSON. Is this under a specific contract that you make with the railroad?

Mr. FELDER. No, sir; we rent our cars to the railroad—yes, we make a contract with the railroads—but we have made no contracts with the railroad to reduce our refrigeration charges. You will understand, gentlemen, and I am a very strict believer in the fact, that these things regulate themselves.

It is a matter of universal information, and if you will take Poor's Manual of Railroads, you will find that wherever railroads consolidate they can render the service cheaper than before, and freight rates go down. Now, the Armour people have not gone into this business for their health. They realize that in order to get the best results from this business they must inaugurate it, foster it, and encourage it as they do. They find that they can handle this stuff for \$68.50 a car, and they go to work and reduce it, since this monopoly, from \$100 to that amount. It was worth \$100 before.

Mr. RICHARDSON. You collect \$270 and send to the railroads?

Mr. FELDER. It is all sent to the railroad; the entire sum is paid to the railroad and the railroad pays us our charge.

Now there are a whole lot of things that are natural monopolies. I have never been so impressed with the idea as I have been recently in my own State. We had a telephone company in the city of Atlanta that was rendering a perfectly satisfactory service, and charging us \$66 a year for our telephones; and we thought that was excessive, and we went to work and got another telephone line built, and we are paying the same \$66 for the old telephone and \$30 now for the new one. I have them both on my desk in my office. Therefore I have reached a conclusion that this telephone monopoly is a natural monopoly, and this refrigerator car perhaps is a natural monopoly. I don't mean to say that it is a natural monopoly in the sense that they should not compete with railroads for the entire business of that railroad, but I say there is every reason why there should be exclusive contracts with a railroad, there is every reason why other lines should not be permitted to come in and compete for the business during the period of the exclusive contract.

The private-car lines, in order to render an efficient service to the producer, must not only furnish his private car, ice it when it leaves the initial point, after it is loaded, but he has got to build his ice houses along at frequent intervals to market, five hundred or a thousand miles. No, it is no use for me to argue that with 5,000 carloads of peaches, and 500 car lines to carry them, that they are all going to build ice houses along the lines of the railroads. Therefore the proper regulation, I think, comes with the competition for the business before the contract is entered into. Let us see how the monopoly works: When there were no exclusive contracts they charged \$100 a car for an inferior service, and every man with a carload of peaches when the competition was full and free, paid \$100 a car for the transportation of his products. To-day under this so-called exclusive contract service they pay \$68.50 a car.

Mr. RICHARDSON. That is because they get all the trade.

Mr. FELDER. And another reason. Under the old system, as is shown by the testimony, when the ice factories in the South did not yield sufficient ice to stock the cars, they would frequently have to

send to the lakes, and pay three or four prices for ice to ice them with. With 300 to 500 separate car lines competing for the business, or even with 100 or even 10 competing for the business in Georgia, they could not figure with any degree of certainty at the beginning of the season whether they would be able to haul 50 cars or 5,500 cars. Therefore if they bought large quantities of ice and stored it and did not get the business, they would lose the ice and at the end of the season somebody would have to pay for it. The result was that the shipper did that. As it is now they have the inspectors, according to the testimony, and they are going about now watching the weather, and if the fruit is killed, they want to know whether it is all killed, or what per cent of it is killed; and Mr. Hale, in order to know all about the humidity of this spot and that spot, sends men crawling about with thermometers in the low places and in the high places to find out the effect of the cold upon the bud or bloom of the peach.

In other words, they have this thing reduced to a science. To-day they estimate that they will haul through Georgia 8,000 cars of peaches, and they estimate that 6,000 cars will go over the Central Railroad and Banking Company. What are the Armour people doing? They are making contracts with ice companies in every State in the South, and according to the testimony here the other day, wherever they find that they can not make a contract, they build ice houses. They could not do it if every man in the country should come in and share this business, because there is not enough business to justify it.

Now, there are other reasons why more than the usual freight should be charged. Now, at the outset I stated that while I appear for a number of very wealthy and influential peach growers, it is true I try the cases of these people, it is true I am attorney for these people in my country, and when the peach season opens, frequently there are claims made for a defective carload of peaches, they are half destroyed or all destroyed—

Mr. ADAMSON. Do you want to complete your hearing this afternoon?

Mr. FELDER. I think I will finish in twenty-five or thirty minutes to-morrow. I simply want to call the committee's attention to the legal questions involved.

Mr. STEVENS. That is what I wanted to hear—first, whether or not you make contracts now for interstate carriage, and, secondly, how far your refrigeration is that provided for in the original interstate act under the definition of instrumentalities, and if not, how far the operation of the bill, that is, the second section of it, would operate to cover you. I would like those points discussed.

Mr. FELDER. I want to make this statement before I suspend this afternoon—that upon the last paragraph of the bill, which provides that the service shall be rendered on the basis of 20 cents a day—

Mr. STEVENS. I think you have a misapprehension of the effect of that clause. The provision which I placed in the bill was that there should be no greater charge for this service—these cars—than is exacted by railroads from other railroads under similar conditions and circumstances.

Mr. FELDER. That is the 20 cents a day—

Mr. STEVENS. No, no, the railroads do not furnish that kind of equipment, so that there are no similar conditions and circumstances coming under the exchange agreement of 20 cents a day. All that

would have to be done would be that the railroads are required to pay what that service is reasonably worth, and that was three-fourths of a cent a mile and so much extra for refrigeration.

Mr. FELDER. I don't know why these men feel that way. I am not a business man myself, but whether the placing of their business under the supervision of bureaus and commissions is a benefit or a detriment to business men, I think it will be decided that business men do not want somebody else to handle their business if they can help it, especially when the men who handle their business, as a rule, would be wholly unfamiliar with it.

Mr. STEVENS. That is true as to the general proposition with respect to private business; but when it comes to the public carriage by which private individuals attempt a public service, then they must respond to the rules which are necessary to govern public service.

Mr. FELDER. I have been a legislator myself, not here, although I tried to come here at one time and did not succeed; but I want to make this suggestion to the gentlemen: I apprehend that no legislator will put himself to the trouble to secure the passage of a bill regulating any sort of an industry unless a rightful demand from somewhere exists for the enactment of that sort of a law.

Mr. STEVENS. I go even farther than that; I do not think that any law ought to be enacted unless there is a necessity for it.

Mr. FELDER. I lay this down as an indisputable proposition that there is no man in this country who ought to be interested in this matter more than the growers; they are not complaining; it is the commission men; but the producer, or the consumer, or the carrier, they do not make the slightest complaint about our business.

Mr. ADAMSON. Do we not get rid of a good many of those people?

Mr. FELDER. I am not referring to the merchants; the only complaint about this business comes from a lot of men who absolutely have no interest, direct or contingent, in the system.

Mr. STEVENS. I disagree to that. For example, Mr. Ferguson is a buyer of peaches; he buys fruits wherever he can find them and transports them to Duluth and other places and sells it.

Mr. FELDER. He buys and sells for a profit.

Mr. STEVENS. Certainly, you can not and ought not to eliminate these men; they perform a necessary and valuable function in society—they always have and always will. Somebody must do that work—take the products from the men who produce it to the men who consume it—and this class must be protected and encouraged rather than denounced and driven out of business.

Mr. ADAMSON. You all insist that you ought not to be made amenable to the commerce clause of the Constitution, although you do admit that the furnishing of railroad cars and the icing goes through the various States.

Mr. FELDER. Just as coal and wood are furnished all along the road as railroads need it.

Mr. ADAMSON. A man who agreed to furnish coal and wood in every State in the United States to railroads would be amenable to the Constitution.

Mr. FELDER. On the contrary, it has been held that he would not be by a distinguished justice of the Supreme Court—that he is no more engaged in interstate traffic than those who carry the baggage.

Mr. ADAMSON. You are correct in saying that he is not subject to an act of Congress, but yet we may make an act of Congress putting anything under the commerce law that is business of an interstate character.

Mr. FELDER. Of course that is a somewhat broader field than I expected to travel in.

Mr. ADAMSON. Here is what I meant to suggest to you. I understand that a great many railroads instead of buying rolling stock lease, and you make your position analagous to the position of those who lease railroad stock?

Mr. FELDER. Absolutely.

Mr. STEVENS. Did you discuss how far you can compel railroads to perform the service you now perform, and in that way they may be able to do business with you or with anybody else, and your service would appear then to be under our supervision?

Mr. FELDER. I am sorry the chairman was not here when I discussed the impracticability of a requirement of that sort.

Mr. STEVENS. I am not speaking of the impracticability; I am speaking of the legal ability.

Mr. FELDER. Well, I do not believe—although it has been done.

Mr. STEVENS. I will read your remarks.

Mr. FELDER. I remarked that there were roads six miles long engaged in this business, and a couple of our cars would be worth more than the whole road. In other words, the Lexington Terminal Railroad, which carries watermelons, peaches, and so on, applied to Mr. Spencer, the president of the Southern Railroad, for an annual pass, and Mr. Spencer wrote him that he would rather buy his road than furnish him with an annual pass over the Southern Railway. I wish to discuss the legal questions involved, and with your permission I will do so to-morrow morning.

Thereupon at 3.10 o'clock p. m. the subcommittee adjourned.

WASHINGTON, D. C., *February 17, 1905.*

The committee met at 10.30 o'clock a. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. THOMAS B. FELDER, JR.—Continued.

At the hour of adjournment on yesterday, Mr. Chairman and gentlemen of the committee, we were discussing the question of the refrigeration of the private cars. We will take Georgia as an illustration, as I represent more particularly the people of that State at this hearing. It seems to me that the business is transacted in about this way: That the private car line leases or hires to the railroad its cars at a certain stipulated price, to be used in carrying the products of the farmers—that is, peaches and vegetables. Then a separate contract is made with the peach growers or producers for refrigerating or icing the cars.

Mr. STEVENS. Is that at the beginning of the season or during its continuance?

Mr. FELDER. As I understand it, the contract is made for a certain period with the railroad. I see some of the representatives of the car lines here. I would like to know when that contract is made. I know that it is made.

Mr. ROBBINS. It is generally made even before this time in the year, for the coming summer, so that the necessary ice can be provided and stored.

Mr. FELDER. Now, the particular method pursued is this: After the contract is made for icing the cars, which is a separate contract from the contract with the carriers for the hire or leasing of the cars, the peaches are loaded into the cars. They are locally refrigerated, and the car starts on its trip to its destination, and there are ice plants erected along the line of travel of the car, and the particular car loaded with the fruit is taken out about every 90 miles, or whenever it is necessary, at the local plants, and the ice supply is replenished, and that is done from time to time until the car reaches its destination.

Mr. STEVENS. Now, what I want, Mr. Felder, is a detailed statement of about how much ice you use at the initial point, how much at different points, say Atlanta or Charlotte, or Danville, Alexandria, or wherever it is iced, and at Jersey City.

Mr. FELDER. I am not in a position to furnish that information. I have no doubt that the car lines or the peach growers will furnish that information to you.

Mr. STEVENS. Will you have it furnished and made a part of your statement?

Mr. FELDER. I will undertake to do it. None of my clients are in the city now. I will communicate with them and get that information and incorporate it in my remarks. I might add, Mr. Chairman, if the view I take is the correct view, and I believe that we can demonstrate it when an opportunity is afforded, that according to numerous decisions of our Supreme Court that is a matter with which this committee can have no concern.

The CHAIRMAN. We can get at it, I think, in some way.

Mr. FELDER. Yes, sir; the service in icing these cars is purely a local service, and the Supreme Court has held it to be so in some 15 or 20 adjudications. In other words, they have held that in furnishing coal to a railroad train, which is engaged in interstate commerce, it is a local service. Of course, a railroad car running between the States is not interstate commerce; that is simply the agent of interstate commerce, and they may have running along the line between two States any number of coaling stations, and they may coal an engine across the Union, and the man who furnished the supply coal does not be considered as being engaged in interstate commerce, because he is not a transporter, and is not engaged in transportation, and does none of the things that are considered interstate commerce.

Mr. STEVENS. We consider it an entirely different proposition. This is an instrumentality which contributes to commerce.

Mr. FELDER. But it seems to me that the case I cited is to the case at bar. We do the identical thing that is done by a dealer who has his coal stations erected from one State to another the entire line of a railroad system. What do we do? We enter into a contract with the fruit, berry, and vegetable dealer to erect icing plants, commencing in the State of Georgia about 90 to 100 miles along the line of the route. We transport and have no contract for transporting anything.

Mr. STEVENS. Can we not compel the railroads to do that, as an instrumentality of commerce, the same as they furnish coal and charge it in the same way as a part of their freightage?

Mr. FELDER. Yes; but that can be met by saying that wherever you would compel a railroad to do that thing you would bankrupt that railroad. Bankruptcy is inevitable, because there is no system in this country that can furnish the private cars that are demanded in modern commerce to carry the various things that can be transported properly in no other way.

Mr. SHACKLEFORD. Mr. Chairman, while you are on that topic, at the request of some of my constituents, I wrote to the attorney-general of my State for a recapitulation of some of the testimony that had been taken in my State concerning the private car lines, and I have that here, and I would like to file his letter to me and the excerpts from the testimony in that case as a part of the hearings on these private car lines.

Mr. STEVENS. Very well; it will be made a part of the record.

Mr. FELDER. I would like to be heard further, Mr. Chairman, when it is possible.

Mr. STEVENS. We will try to hear you.

(Thereupon the committee adjourned.)

WASHINGTON, D. C., *February 18, 1905.*

The subcommittee met at 2 o'clock p. m., Hon. Fred. C. Stevens in the chair.

STATEMENT OF MR. A. B. URION.

Mr. Chairman and gentlemen of the committee, before proceeding with my remarks I should like to answer a question which was propounded to Mr. Felder yesterday, as to whether or not the railroad could be compelled to furnish the refrigeration as a part of the facility of transportation. I can best answer that by quoting the language of Mr. Justice Brewer, in the Knight case, 192 U. S., page 21, where, speaking of the cab service which was in question, he says:

It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

Of course if refrigeration is not interstate commerce, then Congress has no power to regulate it. There is a long line of authorities, beginning with *Osborne v. Florida*, 164 U. S., 650; *U. S. v. Knight*, 156 U. S., 1, 10, and 16; *Nathan v. Louisiana*, 8th How., 73; *U. S. v. Boyer*, 85 3d Rep., 425, which say:

It is self-evident that, however broad and unlimited the language of a statute may be, it must be construed so as to apply only to the matters and transactions within the domain of the lawmaking power, i. e., an act of Congress concerning commerce can be extended only to that which is strictly interstate commerce in a legal sense.

Furthermore, I quote from Mr. Justice Peckham in the case of *Hopkins v. U. S.*, 171 U. S., 578—and I will not read all of that now, because it becomes more pertinent later on—on this particular point:

They are agreements which in their effect operate in furtherance and in aid of commerce by providing for it facilities, conveniences, privileges, or services, but which do not relate directly to charges for its transportation, nor to any other form of interstate commerce.

Now, if refrigeration, as I said before, is not in itself interstate commerce, but is a local service or facility, then Congress can not regulate it.

Mr. STEVENS. Is it not more than that? Was not the testimony to the effect that you made a contract at the beginning of the season, about this time, for the following season's service? You iced the car at the initial point in Georgia, you iced it at Atlanta, and at Charlotte, N. C., and at some point in Virginia—Danville or Alexandria—and then in Jersey City. Now, you loaded the car and performed all all of that service in those various States as one entire contract concerning an article of commerce. Does not that constitute interstate commerce?

Mr. URION. No, sir. I will go into the Hopkins case a little further in answer to that question, quoting further from Mr. Justice Peckham; and he answers all those questions practically. This refrigeration service is something that is performed right along the line of the road. He says:

Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract, even if the lands or some of them were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act because the cattle must have corn for food?

So as to the fruit. The testimony is that all fruits must be refrigerated. Fruits must receive refrigeration for their care and preservation.

Mr. Justice Peckham says further:

Or, would an agreement among the men not to perform the service of watering the cattle for less than a certain sum come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facility, and that its charges for transportation are enhanced because of an agreement along the line not to lease their lands to the company for such purposes for less than a named sum; could it be successfully contended that the agreement of the landowners among themselves would be in violation of the act as being in restraint of interstate trade or commerce? Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between States? Would an agreement between dealers in horse blankets to sell them for not less than a certain price be open to the charge of a violation of the act, because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced?

Mr. STEVENS. Is there not a great difference between a negative proposition like that and the affirmative act which you contract to do which is an instrumentality of commerce and must be done in furtherance of commerce between the several States?

Mr. URION. No, sir; my contention is that it is not an instrumentality of commerce; it is an aid.

Mr. STEVENS. Is it not more than an aid?

Mr. URION. We are getting pretty deep into a question which I have arranged to touch upon later.

Mr. STEVENS. You had better proceed, then, in your own line.

Mr. URION. I will reach that presently. To proceed in regular order now, I want to say that I shall not indulge in theories or possibilities, but as far as I am able I will in a plain manner deal with fact and realities.

The measures before Congress to regulate or abolish private cars, which this committee is called upon to deal with, are largely due to public demand that a remedy be provided, if one does not already exist, to correct and remove alleged wrongs and abuses.

The first and principal wrong and abuse complained of, if I understand the public sentiment, is that private cars are in some manner made the medium through which the owners receive rebates from railroads.

Mr. STEVENS. The owners, or somebody else.

Mr. UNION. Well, I will reach that in the answer. The second wrong alleged is exclusive contracts with railroads for the rental and use of the cars—called by the more radical element secret contracts. The third alleged wrong is exorbitant charges by the private-car companies for the special service of refrigeration rendered shippers.

It is right that some measure should be provided if the wrongs complained of actually exist; and, if the laws now on the statute books provide no remedy, I shall not be heard to raise my voice in protest. In answer, now, to the first charge, that the Armour car lines are being used in some manner, directly or indirectly, as a means or medium for the owners or others to receive rebates from the railroads, I desire to say, and I want to say to this committee, and through the committee to the public, with the same emphasis and force that I would use if I were making the declaration under the solemnity of a judicial oath, that the charge is not true.

If the representatives of the element, so conspicuous in public, who are sowing socialistic seed that may bring about great peril to our nation—that element which has not invested a penny in the upbuilding of the great industries of this country, which attacks property rights, and seeks the enactment of laws to imperil the investment of capital—which element is so violently assailing the private-car interests, believe the contrary of the statement that I am about to make—and I make this with knowledge whereof I speak—that the Armour car lines do not directly or indirectly receive from railroads, either for themselves or other persons, any rebates whatever—I repeat that the people who believe the contrary and are looking for a remedy, and asking Congress to provide one, need only go to the judicial branch of the Government in the enforcement of the remedy which Congress has already provided. I refer to the Elkins amendment to the interstate commerce act, which, in plain terms, if I can read the English language correctly, furnishes the remedy and the punishment. Permit me, therefore, to quote therefrom:

And it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give, or solicit, accept, or receive any such rebates, concessions, or discriminations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars.

It seems to me plain that private-car companies need not be legislated into the realm of common carriers in order to bring them within

the purview of this law. The merchant, the manufacturer, the individual who receives rebates from the railroads can be reached and punished under that act.

And why does not the element which is spreading these charges, which is inflaming the public mind, and which is working irreparable injury not only to the industries attacked but to all industries which are dependent upon the investment of capital, either by a few individuals or by the public, file its charges with the proper branch of the Government, and put into action the machinery which Congress has already provided? This query has no doubt already presented itself to your minds, and I venture this answer: Because its allegations and charges would have to be made under a sacred judicial oath, and it could not indulge in the extravagant misstatements which have been voiced here. The law punishes for perjury.

Passing now to the second alleged wrong, of exclusive contracts with railroads for rental and use of the cars, the so-called secret contracts—

Mr. STEVENS. One moment. On the first wrong, I want to ask you whether or not the Armour car line is not the medium for the payment of rebates for the purpose of influencing transportation?

Mr. URION. Absolutely not.

Mr. STEVENS. Is there not a method, and has it not been used? You charge excessive prices for refrigeration—

Mr. URION. That is the allegation.

Mr. STEVENS. That is the allegation, yes. You get excessive mileage by running fast—

Mr. URION. That is the allegation.

Mr. STEVENS. That is the allegation. And in order to get business you pay or offer some advantages to shippers to use your cars, and compel them to use your cars when they otherwise would not?

Mr. URION. No, sir—

Mr. STEVENS. That gives that shipper a practical rebate.

Mr. URION. No, sir; and if my answer was not broad enough to cover that, I want now to make it broad enough to cover it.

Mr. STEVENS. Has that not been done?

Mr. URION. No sir. In times past it was done, but the time for taking and giving rebates has long since passed for the car lines.

Mr. STEVENS. What do you mean by "long since?"

Mr. URION. I mean since it was made unlawful.

Mr. STEVENS. There has been nothing of that kind since the Elkins Act?

Mr. URION. No sir. And I repeat, if that element which is so rampant in stirring up that matter believe that it is, all they have to do is to go before the judicial branch of the Government and put the remedy that has already been provided into effect.

Passing now to the second alleged wrong, that of exclusive contracts with the railroads for the rental or use of cars—the so-called secret contract—I deny that there are secret contracts; and in support of my denial I refer you to the case of Consolidated Forwarding Company v. The Southern Pacific Company, in U. S. C. C. Rep., in which the Armour car lines, or the Armour Company, as it was at that time, intervened. That was a case in California that was tried in January, 1899, six years ago. At that time the exclusive contract with the Southern Pacific Railroad was brought forward, presented to and filed

with the Commission. That contract has never been regarded as secret by anyone who had interests in it, nor by the public in California. As an evidence of that, the Chamber of Commerce of Sacramento, in 1903, in commenting upon the contract with the Southern Pacific Railroad, said—

Mr. STEVENS. Is that the case that you showed me the other day?

Mr. URION. Yes, the Consolidated case, in 1899; six years ago.

Mr. STEVENS. Yes, I read that.

Mr. URION. The report of the Sacramento Chamber of Commerce said:

The division of the fruit-shipping business among these five companies did not justify any one of them in erecting the extensive plants and putting into operation such a complete system for the refrigeration and care of green deciduous fruit while in transit as is necessary and as is now in operation throughout the United States. Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company.

I might say that this contract of 1900 was a renewal of the one previously in force, to which I referred as coming out in 1899.

(Reading):

Such conditions prevailed until 1900, when a contract was entered into between the Southern Pacific Company and the Armour Car Line Company, giving the car line the exclusive privilege of operating in California, in return for which the car line obligated itself, at all times, to provide sufficient number of refrigerator and ventilator cars to all shippers on equal terms. The rate was reduced by the Armour Car Line from \$175 to \$100 from Sacramento to New York on 26,000 pounds, and the rates to other places proportionately decreased.

I state it as a fact within my own knowledge that five years ago in North Carolina such exclusive contracts existed, and they were not secret. As an illustration I will say that in December, 1899, after experimenting for a few years with competing car lines, the growers in the fruit and berry districts in that State went to the then traffic manager, now vice-president of the Atlantic Coast Line, and demanded that the company which should undertake to furnish the cars for the next season should deposit \$10,000 in cash to protect the growers and shippers against the losses they had theretofore and in previous years sustained by reason of the inadequate supply of cars and the losses resulting from improper icing and refrigeration. The railroad company demanded and received that deposit from one of the car companies—not Armour—and that company undertook the business for that year. It proved to be a disastrous one for the growers and shippers because of the failure of that company to provide at the proper time, when needed, sufficient number of the special cars, and because of the lack of facilities to properly ice and care for the contents of the cars.

The claims for losses by the growers and shippers that year ran far beyond the \$10,000 cash deposited by that company, and so dissatisfied were the growers and shippers on the line of that road in North Carolina that they again went to the railroad and demanded that an arrangement be made with some one responsible car company for equipment and the required icing facilities to cover the next year. At that time there were three competing car companies, and the railroad stated to the growers that they should investigate for themselves and decide which of the companies they wanted, and when they had selected one, that it, the railroad, would, if the growers and shippers desired, enter into an exclusive contract for a term of years. After a com-

petitive test and submission of rates by the several car companies the Armour car line was selected by the growers and shippers, notwithstanding their rate for refrigeration was somewhat higher than that of the other competing companies; whereupon the railroad was requested by the growers and shippers to enter into an exclusive contract with the Armour car line, which the railroad did, for a term of three years. When that term expired, the railroad again, at the request of the growers and shippers, because of the satisfactory service, renewed the contract for five years, and that contract is now in force.

Mr. STEVENS. Now, just tell us what territory that covers.

Mr. URION. That covers the berry district of North Carolina, all of the shipping district of North Carolina. Two roads operate there, the Atlantic Coast Line and the Seaboard Air Line.

Mr. STEVENS. About how many counties does that district cover, and how many cars would be required there?

Mr. URION. About 2,000 cars come out of there now, if I understand it.

Mr. ROBBINS. There were about 2,200 cars on the Atlantic Coast Line alone last year.

Mr. STEVENS. Could you give us the names of some of those growers?

Mr. URION. I am not able to do that.

Mr. STEVENS. Could you, Mr. Robbins?

Mr. ROBBINS. The Atlantic Coast Line did most of that business there, over a territory of about 150 miles.

Mr. STEVENS. We would like to have the names of some of the growers there.

Mr. ROBBINS. Oh, the names of growers?

Mr. STEVENS. Yes, the names of growers.

Mr. URION. We can give that to you, I am sure. I will ask that that memorandum be made for you.

Now, here are three instances meeting the charge that has been spread all over the country about these secret contracts. But that is not all. I know of my own knowledge, and it was stated to this committee by Judge Gober and Mr. Hale a few days ago, that not only was the Georgia exclusive contract entered into with the knowledge of the growers and shippers affected, but it was entered into at their request and on their solicitation. Still further, I wish to call the attention of the committee to the fact that there was absolutely no secrecy about these exclusive contracts, and there never has been.

Mr. ADAMSON. Will you please answer me this legal question?

Mr. URION. I will endeavor to.

Mr. ADAMSON. If there are four or five car companies, all of them irreproachable as contractors, and the railroad, whether at the solicitation of the fruit growers or not, trades with the one that makes the most earnest efforts and gives the best guarantees, is that discrimination?

Mr. URION. No, sir; and it is entirely lawful. I want to get through with the part of this concerning the secret feature of it, and then I will take up the exclusive feature, which immediately follows it. I wish to read you from the sworn testimony of Mr. Patriarch, general traffic manager of the Pere Marquette, concerning the exclusive contract with that road, which has been so particularly referred to before

the committee here. This testimony was produced before the Interstate Commerce Commission at the hearing in Chicago last May:

Mr. DECKER. Now, Mr. Patriarch, your company, after the cancellation of the arrangement in 1902, at the end of the shipping season, made a new arrangement and entered into a definite contract for a term of years with the Armour car line in December, 1902. Is this correct?

Mr. PATRIARCH. Yes, sir.

Mr. DECKER. Have you a copy of that contract with you?

Mr. PATRIARCH. I think that contract is filed with the Interstate Commerce Commission.

Commissioner PROUTY. I think that contract is in the record, Mr. Decker.

Mr. DECKER. I was going to ask Mr. McPherson.

Now, Mr. McPherson was the counsel of the Pere Marquette Railroad.

Mr. McPherson, did you send to the Commission a copy of the contract of 1902?

Mr. MCPHERSON. Yes, sir.

Now, I have given you instances of these contracts, including those in California, North Carolina, Georgia, and Michigan, showing that there was no secrecy. The only secrecy was that they were not proclaimed from the house tops or nailed to the court-house door.

Mr. STEVENS. Why was that contract sent to the Interstate Commerce Commission?

Mr. URION. I do not know. There was no reason why it should be filed with the Interstate Commerce Commission any more than a contract between a merchant and the owner of a building.

Mr. ADAMSON. Which contract is that?

Mr. URION. The Pere Marquette contract.

Mr. STEVENS. Was there any competition in obtaining the contract with the Pere Marquette Railroad?

Mr. URION. That I can not tell you. Mr. Robbins can answer that better than I can.

Mr. ROBBINS. There was; yes, sir.

Mr. STEVENS. How many other lines competed, do you know?

Mr. ROBBINS. I do not know that I can answer that; but I might explain in that connection that the practice had been for the Pere Marquette road to furnish a few cars themselves, and for them to go to all the railroad connections for such cars as they could get from them, and to get some cars from the private car lines if they could. In other words, they got cars in any and every way they could; and by leaving it open in that way they found that they could not get enough. Everybody's business was nobody's business, and the result was that the shippers were unable to get equipment.

Mr. URION (resuming). I ask the committee what can be more clearly shown than that the alleged secret feature of the exclusive contracts with railroads exists only in the minds of certain people who choose, from some ulterior purpose, to so consider.

It seems to me unnecessary to say anything further on the so-called secret feature, and I shall therefore pass to a consideration of the exclusive feature. Admittedly we make exclusive contracts with railroads wherever possible. It is lawful for us and it is lawful for the railroads to do so, and I cite as my authority the Supreme Court of the United States in the Pullman Car and the so-called Express Company cases, reported in 117 U. S., beginning on page 1. I will not read them here, but they held, flat-footed, that the railroads had the right to make

exclusive contracts for one company to the exclusion of all others—with the Pullman Car Company for the accommodation of passengers, and the Express Company for the carriage of merchandise and commodities.

Admitting then, as must be done, that exclusive contracts are lawful, I shall attempt to show you, and firmly believe will be able to convince you, that exclusive contracts are necessary in order that growers and shippers may obtain the service necessary to make their business successful and profitable. In order to meet the necessities which exist to refrigerate contents of the cars when demanded by shippers, the car company must maintain, at many hundred places in the different States, icing stations or ice houses, where the ice either from natural lakes or from artificial ice factories is stored. At each place a corps of men are employed, machinery for transferring the ice from the ice houses into the bunkers of the cars is maintained, and in addition thereto it owns and operates in different States artificial ice factories, and in other States natural lakes from which ice is cut, all of which is used at the many local points for the refrigeration of the contents of the cars when the same is so requested by the shipper.

The business is one of great hazard. Ice must be stored at the different localities where fruits and berries are raised and in the different States between that section and the principal markets of the country, long in advance of the maturity of the crop, and in sufficient quantity to anticipate the requirements of the shippers. At the present time the ice houses in Georgia are being filled, in anticipation of the next peach crop, which does not mature until August.

Mr. ADAMSON. I noticed this morning that the Columbus papers say that every bud in the State is killed.

Mr. URION. Very well; then we have accumulated several thousand tons of ice down there which must go to waste, as it did in 1899, I believe, as has been testified here. Contracts have been entered into with ice factories in that State for many thousand tons of ice, which is now being manufactured and stored, and so at different points in different States from that section to the principal markets. There may not be a car of peaches moved from Georgia next season. Who can foretell whether or not there will be a crop? The same condition exists in every fruit and berry section of the country. If the ice is not used; if the labor—and it is skilled labor to a large extent—kept upon the pay roll the year around, is not required, the car companies suffer great loss. As an incident of the great risk and the large expenditures required, I am free to cite a contract that has recently been entered into with the so-called Senator Clark's railroad, running from Salt Lake City to southern California, a part of it traversing the great desert of Death Valley. I believe it is called the Salt Lake City and San Pedro road. It is not known what the future fruit prospect on the line of that road is, but believing in the future development of the country along the line of that road, the Armour car line have contracted to furnish the special fruit and berry cars that may be needed during the period of several years, and in order to furnish to the shipper of fruits and berries, if he shall so require at any time during that period, the ice for refrigerating the contents of the cars, the car line company has been required to erect, and is now erecting, on the edge of the desert, an artificial ice factory, at an estimated cost

of \$75,000. I mention this to show the risks of the undertaking and the enormous outlay of money required.

The contracts between the railroads and car companies bind the car company to perform the service of refrigeration for the shipper if he shall require it, being held responsible to the shipper in such case for failure; and, as another element of risk in connection with the business, I may say in passing that large sums of money are paid annually to shippers by way of legitimate claims for failure or neglect on the part of employees at local points to properly ice or refrigerate the contents of cars. Neglect will and does frequently happen; and then there are circumstances which are beyond our control, as was the case in Idaho, where the ice houses burned down, which was referred to in Mr. Robbins's testimony.

Mr. ADAMSON. There is no such uncertainty about the peach crop out in Michigan, is there, where the springs are later, as there is in Georgia?

Mr. URION. It varies. The trouble out there, Mr. Adamson, is that they do not handle their trees as they are handled in California or as they are handled in Georgia, and very often the trees in the Michigan district overbear; they bear so large a crop one year that the next year's crop may be very light.

Mr. STEVENS. And they have diseases?

Mr. URION. Yes, sir; diseases get among them.

Mr. ADAMSON. I referred more particularly to the uncertainty on account of cold weather.

Mr. URION. I think the lake protects them more fully from frost.

Mr. ADAMSON. They never lose a crop from frost in California?

Mr. URION. Why, yes; I believe it was in 1899 that we had that big frost in California while this Consolidated case was on trial before the Interstate Commerce Commission in Los Angeles. Am I not correct about that, Mr. Robbins?

Mr. ROBBINS. Yes, sir.

Mr. URION. Where some 20,000 cars were expected to be hauled out of there that year, it was reduced to nearly three-quarters.

Mr. STEVENS. Reduced nearly three-quarters?

Mr. URION. Yes, sir. And Mr. Robbins has gone into greater detail in giving you other reasons than I have attempted. The report of the chamber of commerce of Sacramento, which I read you some time ago, and the statement of each one of the growers and the shippers of Georgia who appeared before you, the statement which I have made to you concerning the North Carolina growers and shippers, and the sworn testimony of the growers and shippers from Michigan presented at the Interstate Commerce Commission hearing in Chicago last May, and which I shall read to you presently, all bear testimony to the fact that such exclusive contracts are necessary in order that the growers and shippers may be best served; and they bear further testimony to the fact that where several different private car companies are in competition and their equipment is used in one district, the growers and shippers are not served in a manner to protect their best interests, and that where there have been several companies there was either an insufficient number of cars at the time when they were most needed or that they were insufficiently iced.

No one company assumed the responsibility, and, indeed, no one company could do so, for the reason that it was impossible to know

how many cars of their line would be used, or how much ice would be required from any one company to take care of the fruit that might be shipped in their cars, and the result was that chaos reigned, and the growers and shippers suffered great loss. That is the testimony from every district where there have been competing private car companies. You are familiar with the statements of the gentlemen from Georgia, and with the statement of Mr. Robbins, and with my statement concerning North Carolina, and with what the Sacramento Chamber of Commerce has said on this point, but I beg to read to you an extract from the testimony taken in the Michigan case in Chicago last May before the Interstate Commerce Commission on this point. All this testimony was under oath before the Interstate Commerce Commission.

Mr. ADAMSON. Why have none of the peach growers of Michigan taken the trouble to come here and testify that they are being outraged?

Mr. URION. I want to say in answer to that that in all of the complaints that have been made against the Armour Car Line—and they seem to be the target at which everybody shoots—not a single grower or shipper has been heard to complain. I do not mean by that that there are not some dissatisfied and disgruntled shippers, because it is impossible to satisfy everybody; and I have no doubt that there are shippers who have grievances; but I do not believe that any of them can state honestly, without prejudice, that their financial condition has not been bettered, as a whole, by the installation of the Armour Car Line on the railroads of their district, and by the service that went with it.

Mr. STEVENS. Of course, they admit that. What they say is that it would be better for the railroads to perform the service themselves.

Mr. URION. I expect to show the committee presently, when I reach that feature of it, that the railroads can not be required under the Constitution to perform that act, unless it is an act of interstate commerce, and I expect to go further and show you that the service is a local one, and not one performed as a part of interstate-commerce transportation.

I want to say, gentlemen, that in every district where we have been assailed, where the attack has been public, and we have had a chance to defend ourselves, the most prominent growers and shippers have voluntarily come forward, as they did before this committee, to testify to the good of the service.

Thereupon, at 2.45 p. m., the subcommittee adjourned until Monday, February 20, 1905, at 2 o'clock p. m.

WASHINGTON, D. C., *February 21, 1905.*

The committee met at 2 o'clock p. m., Hon. James R. Mann (acting chairman) in the chair.

ARGUMENT OF MR. A. R. URION—Continued.

Mr. URION. Mr. Chairman and gentlemen of the committee, leading to the discussion of the main question before the committee, I stated on Saturday there were three things that seemed most to concern the

public respecting private cars. One was that they were believed in some manner to be used as a means for paying rebates received from the railroads, paid to the owners of car lines and others. That I discussed and made a positive denial of any such thing.

The second point was that of the exclusive contract with the railroads for the private cars, called by some "secret contracts." I took up that feature and discussed it, showing absolutely that the secret feature never existed; that as far back as 1898 an exclusive contract was in force in California, and that was followed down to five years ago in North Carolina, when the growers and shippers joined in a petition for an exclusive contract; then into Georgia, where the same thing was done, and into Michigan itself, which has been talked about so much. So that so far as the secret feature of the contract is concerned, I think that was pretty thoroughly exploded.

As to the exclusive feature of the contract, I admitted that the car lines made exclusive contracts with the railroads wherever it was possible to do so. I said that those contracts were lawful, and in support of my statement I cited the Supreme Court of the United States in the Express case and the Pullman car cases, to the effect that they were necessary to the best service of the shippers and growers. I started in and quoted the testimony which you have listened to from growers and shippers from West Virginia and Georgia, from statements that were made respecting North Carolina and California, and I had just started in, at the time of the adjournment, to read the sworn testimony of certain growers and shippers from Michigan who were heard before the Interstate Commerce Commission at the hearing last June, in Chicago. With your permission I will proceed from that point, taking up first the testimony of Mr. Patriarche, who is the general manager of the Pere Marquette Railroad in Michigan.

MR. PATRIARCHE. What was the difficulty in handling fruit prior to the contract with the Armour car lines?

MR. PATRIARCHE. It was the lack of refrigerator cars.

MR. McPHERSON. * * * Is it true that the Pere Marquette receives any rebate, or in any way has returned to it the amount of mileage it pays on the car?

MR. PATRIARCHE. No, sir.

* * * * *

MR. McPHERSON. Is it practicable for the company, with certainty, to furnish as good service by any other means with which you are acquainted as it furnishes under the present Armour car-line contract?

MR. PATRIARCHE. It would be impossible to do so.

MR. McPHERSON. Why so?

MR. PATRIARCHE. Because the refrigerator cars, as to numbers and the ability to obtain them, are very limited. We have tried in years prior to this contract to obtain all the refrigerator cars we wanted in order to take care of the fruit crop of the territory that we have to take care of, and we found great difficulty in getting refrigerators, and there are a great many conditions connected with the operation of these miscellaneous refrigerators that make it almost impossible to handle the fruit business properly.

MR. TOWNSEND. Is Mr. Patriarche the assistant counsel for the Pere Marquette?

MR. URION. No, sir; Mr. McPherson is the assistant counsel. Mr. Patriarche is the general manager.

(Reading:)

One of the disabilities is this, that a miscellaneous refrigerator has got to go to a certain territory and has to go back to the road we received it from. Very often these cars are loaded with fruit that is not billed. There is no destination at the time they are loaded, but it is effected a few hours afterwards, and very often a car

would be loaded to go east, and when the seller receives his instructions that car is to go west. We are up against that feature in regard to miscellaneous refrigerators, and in the use of the Armour car we have a car that will go to any place in the United States without regard to route.

Mr. McPHERSON. Mr. Patriarche, were you prompted in making the contract with the Armour Car Line by any other purpose than to secure a good service for the fruit shippers?

Mr. PATRIARCHE. Yes, sir; that is the only motive.

Mr. McPHERSON. No other motive?

Mr. PATRIARCHE. No other motive.

Mr. McPHERSON. Have you been able under that contract to give a better service than you were ever able to give before?

Mr. PATRIARCHE. We think we have ever since we have had the use of those cars.

Commissioner PROUTY. Did you make an effort, Mr. Patriarche, to trade with any other car line before you closed with the Armour Company?

Mr. PATRIARCHE. We have with a great many. We have been offered 100; we have been offered 200; we have been offered 50 refrigerator cars by different companies, but here is a traffic that has to be moved in four or five weeks that involves two or three thousand cars.

Commissioner PROUTY. Is there any other car company that could supply your wants except the Armour Company?

Mr. PATRIARCHE. I do not know of one in the United States.

* * * * *

Commissioner PROUTY. How many refrigerator cars would it require to handle the traffic on your line; how many cars must you own to handle the traffic on your road?

Mr. PATRIARCHE. I would say, Mr. Commissioner, to handle the peach traffic alone during the months of August and September, we would need 2,500 to 3,000 cars.

Mr. ESCH. My impression was that Mr. Ferguson testified that the Pere Marquette used about 1,800 or 1,900 cars.

Mr. URION. There were over 3,000 cars used during the peach season of 1903 for the moving of that crop.

Commissioner PROUTY. Suppose the Pere Marquette road furnished its due proportion of the refrigerator cars, what part of the whole 2,500 or 3,000 cars would that line furnish?

Mr. PATRIARCHE. I think that is a difficult question to answer, because the burden of origin is with us. The disposition of the connecting line is to let the originating road get the best it can in transportation facilities. There is no particular obligation on the part of the connecting road to furnish any cars.

They want them routed over their own lines.

There is the difficulty that the railroad man sees in getting refrigerator cars from the connecting railroads. While they might furnish them a certain number, when those cars were loaded they would have to be consigned and passed over the line of the road furnishing the particular cars. And Mr. Patriarche testified, as I read to you a few minutes ago, that often those cars were loaded before their destination was fixed, and if the markets where they were originally intended to go should fail they would want to send them somewhere else, and if the goods were loaded in a refrigerator car of one line and the destination was changed to some place off the line of the connecting road they would have to be unloaded and put in cars of other lines.

Now I have read what Mr. Patriarche says, and I will take up the testimony of the shippers on the Pere Marquette line.

Mr. ESCH. What was the date of Mr. Patriarche's testimony?

Mr. URION. It was in June, 1904. The dates were June 2, 3, and 4, 1904. Mr. Gurney, who was a large shipper up in that district, also testified. I am dwelling very largely on Michigan because all the complaints that the Commission has heard have been directed to Michigan. Mr. Gurney says that he has been a shipper for a great many

years, and with respect to the cars and the service which we have provided under the exclusive contract with the Pere Marquette line he testifies as follows:

Mr. URION. * * * I understand that you had to ship the bulk of your fruit to Chicago and Milwaukee, and these cars, with the service you get, have enabled you to get other buyers in there and have made your place a competitive point and paid you a higher price for your peaches?

Mr. GURNEY. That is the point.

Mr. URION. Do you state to the Commission that you would be able to reach these far distant points without refrigeration and the service that goes with it?

Mr. GURNEY. I could not.

Mr. URION. You have had experience in previous years?

Mr. GURNEY. Yes, sir; and have lost a good many cars.

Mr. URION. As a matter of profit and loss to you as a business man and grower, has it resulted in a profit to you, notwithstanding the refrigeration charge, to have those cars, as against no charge for refrigeration in the previous years?

Mr. GURNEY. Of course it has.

You remember that the Pere Marquette, in the early days, when the business of fruit growing was in its infancy, furnished free ice and cars wherever they could get them? I read further from the testimony of Mr. Gurney:

Mr. McPHERSON. Prior to 1903 the Pere Marquette furnished you cars that enabled you to market your fruit at any point on the Pere Marquette, did they not? You could reach Milwaukee and Chicago and get all your fruit there?

Mr. GURNEY. Yes, sir; but not Detroit, and we could not get any price.

Mr. McPHERSON. The advantage of the Armour car is that it enables you to reach points off the Pere Marquette system with refrigeration?

Mr. GURNEY. Yes, sir.

Mr. TOWNSEND. Do you mean to say that you do not have connections with Detroit on the Pere Marquette?

Mr. URION. I do not know whether at that time the Pere Marquette had direct connections. This is just the testimony of Mr. Gurney.

Mr. TOWNSEND. It had been so for years.

Mr. URION. This is just his testimony. I will read further:

Mr. GURNEY. Yes, sir. Boston, Columbus, Ohio, Pittsburg, Connecticut, and Albany, and when we did have the railroad company once in a while send in an Armour car it would not be seen to, and when they sent an M. D. T. car there was nobody to see to it, and when it got through there was no ice in it. The Armour people have people to see to it, and it costs them money.

I will not read all the testimony, but just the parts that are pertinent with respect to this point.

Mr. TOWNSEND. This was the testimony taken where?

Mr. URION. In Chicago. This was all sworn testimony before the Interstate Commerce Commission. We introduced at that time in Chicago, before the Interstate Commerce Commission, some 30 witnesses, growers and shippers from Michigan. They examined eight or nine of those witnesses, and then said that they did not care to hear any more and shut them off. We had as many as something like 40 or 50, and they heard only eight or nine of them, and I am now reading you this testimony.

Mr. ESCH. As a result of that investigation, has the Commission made any recommendations?

Mr. URION. Yes, sir. I will touch on that presently.

Mr. STEVENS. We have their recommendations here, and I will put the conclusions in the record.

Mr. URION. They listened to several growers, who were heard on the part of the complainant, and one of them had a grievance and

entered a suit, and the testimony which we introduced was solely and entirely that of growers and shippers, except the testimony of two railroad traffic managers, Mr. Patriarche and the traffic manager of the Michigan Central. I will pass on now to the testimony of Mr. Wylie:

Mr. McPHERSON. Prior to the present arrangement you were able to market your fruit in good condition at Chicago and Milwaukee, were you not?

Mr. WYLIE. Yes, sir.

Mr. McPHERSON. Or any market reached by the Père Marquette?

Mr. WYLIE. Yes, sir; but principally Chicago and Milwaukee.

Mr. McPHERSON. The only advantage you find in the Armour car is that it allows you to reach markets beyond the Père Marquette?

Mr. WYLIE. It enlarges our market.

Mr. URION. But for the ability to reach foreign markets, or bring in foreign buyers, your custom would be to ship to the Milwaukee and Chicago markets, would it not?

Mr. WYLIE. Very largely.

Mr. URION. Would that result in a congestion of the markets here and consequently lower prices?

Mr. WYLIE. It did result in congestion and lower prices.

Mr. Flood is another grower and shipper. I read from his testimony as follows:

Mr. URION. You had some experience with the use of the Armour cars in 1902 and 1903 and the payment of the refrigerator charge talked about there?

Mr. FLOOD. I know more about it from extended markets than from my own shipments. I understand this, that since we have got better service from the Armour folks we are able to extend our markets. Prior to that we had to dump almost everything into the Chicago and Milwaukee markets, and during the time we had most fruit there was a congested condition. Of course I know that since the Armours put their cars on there we have had a better system and we have buyers there. Prior to that they would say, "We can not come here to buy because we can not get cars to make our markets."

Mr. URION. Has it resulted as a practical result, the question of profit and loss, the question every business man looks at, in a profit or loss, the payment of the refrigerator charge and the service which goes with it in the use of the Armour cars to the growers and shippers in your vicinity?

Mr. FLOOD. We have been able to get more for our fruits in late years.

Mr. URION. Notwithstanding the demands of this refrigeration charge you have been able to make more money than in previous years when you had not that charge?

Mr. FLOOD. I can not tell you the charges on refrigeration, but we get better prices.

Mr. URION. And make more money?

Mr. FLOOD. Yes, sir.

Mr. URION. What other business are you in?

Mr. FLOOD. Lumber.

Mr. URION. Then you have considerable acquaintance in the vicinity you live in?

Mr. FLOOD. Yes, sir.

Mr. URION. Are you expressing the general sentiment of the growers and shippers in your vicinity?

Mr. FLOOD. I think so. I am interested in the bank and know from the depositors that the fruit growers are in very much better condition than ever before.

Mr. STEVENS. You do not ascribe that entirely to the use of the Armour cars, do you?

Mr. URION. No, sir. We make no such claim as that. We do claim, however, that the installation of these cars on the line of the Père Marquette road did better the condition of the growers and shippers on that line, and they have so testified, and there are others who would testify to it if they had the opportunity.

Mr. TOWNSEND. When were they installed on that line?

Mr. URION. In 1902; I believe I am correct about that year.

Mr. RYAN. That was the first exclusive contract?

Mr. URION. Yes, sir. They have been in effect—

Mr. RYAN. I mean on that particular line?

Mr. URION. Yes, sir. And in answer to your question, Mr. Chairman, I will read further from the testimony of Mr. Flood:

It may not be as a result of that.

Mr. URION. But the fact stands there?

Mr. FLOOD. The fact is there, and we are reaching other markets.

Mr. URION. That is all.

Mr. POWELL. Did you not have buyers in there prior to two years ago from outside markets?

Mr. FLOOD. No; I do not think we had prior to two or three years ago. It was all solicited through commission merchants, as a general thing, through Chicago and Milwaukee. I did two or three years ago go in with some of our folks and we shipped cars to foreign markets. I know we did not get much.

Mr. URION. Did they get there in good condition?

Mr. FLOOD. I do not know what the reason was, but we did not get much.

Mr. Crobin is another grower. I will read to you from his testimony, as follows:

Mr. URION. Prior to 1902 and 1903 where was the bulk of your stuff in your community shipped?

Mr. CROBIN. Most of those years, by not having refrigerator cars and buyers there to buy of us—the heft of the crop was shipped to Milwaukee and Chicago.

Mr. URION. Were they regarded as markets that were as good as outlying markets?

Mr. CROBIN. No, sir; it has been the talk of the growers that they wished they had some way they could load cars and ship them to different points so as to relieve the glut that happened at Milwaukee and Chicago.

Mr. URION. You got that in 1902 and 1903?

Mr. CROBIN. Yes, sir; in 1902 and 1903.

Mr. URION. Did it result in reaching the East?

Mr. CROBIN. Yes, sir.

Mr. URION. Did it result in additional prices and enable them to get better prices?

Mr. CROBIN. Yes, sir. The way I look at it, the first thing for a buyer, in going into a locality to buy fruit, is to know whether the fruit is there. After that he wants to know what his facilities are for shipping. If he finds the two conditions, that the fruit is there and the conditions are such that he can get plenty of cars to ship out, he will go there and locate. The more buyers there are in a locality necessarily the price goes higher to the grower; they receive more money for the fruit. I think the last two years the growers have got considerably more for their fruit than they would have if it had been confined to the Chicago and Milwaukee markets.

* * * * *

Mr. URION. You are well acquainted and have lived in the community you now live in for some considerable time?

Mr. CROBIN. I have lived there since 1865.

Mr. URION. Are you expressing the general sentiment of the growers in your vicinity?

Mr. CROBIN. I am. Mr. McGuire came to me about three weeks ago and requested me to talk with the different growers with regard to how they liked the service of the Armour car line. In that way I talked with possibly twenty of the different growers. They all thought we had the best service of any we ever had.

Right in that connection I will say that Mr. McGuire is the special agent for the Pere Marquette road, and there had been some complaints made by Mr. Fergusson, from Duluth, and they sent their special agents out among the growers and shippers to find if there was any valid complaint against the cars they were furnishing, or against the refrigeration service.

Quoting further from the testimony of Mr. Corbin:

Mr. URION. Taking all that in consideration, all you have testified to, will you tell the Commission whether you regard the refrigeration rate of the Armour car line as excessive?

Mr. CROBIN. From a business point of view, rather than to go back to the way it was before we had this, I think the rate is not exorbitant at all. I would rather pay the prices to-day and be sure of the service we get.

Mr. TOWNSEND. May I ask you, do you make special contracts with the individual shippers?

Mr. URION. Yes sir. I will reach that presently, further along. It is an implied contract. It is not a written contract in all cases.

I will now read from the testimony of Mr. McCarty, another grower and shipper:

Mr. URION. Will you state to the Commission your experience in the few years prior to 1902 and 1903, when Armour cars were not in use there, and your later experience in 1902 and 1903, when the Armour cars were there, in your own language, in respect to the cost, profit to the grower and shipper, and so on? Just state it in your own language.

Mr. McCARTY. I have been in business there about forty years, and I have been a peach shipper, and, of course, we have had lots of trouble shipping peaches and getting them shipped to a distance. We have had to ship them locally a great deal and met with loss. Since the Armour car service went in we have had good success with our peaches. In 1902 I shipped 45 cars and made money on all of them.

Here is one shipper with 45 cars. I want to contrast that with the testimony of the principal complainant here as to the number of cars he handled. I will reach that presently. I will quote further from the testimony of Mr. McCarty:

In 1902 I shipped 45 cars, and made money on all of them. I shipped 7 by the Grand Trunk. I got the cars free and paid for the icing. I lost on all of them. One I sold on track.

Commissioner PROUTY. Does the Grand Trunk use the Armour car now?

Mr. McCARTY. I do not think they do. I find it pays me, as to the icing service, to have some one look after it. It pays better prices for the peaches.

We have a contract with the Grand Trunk road now which we did not have at that time. Continuing Mr. McCarty's answer:

It pays better prices for the peaches.

Commissioner PROUTY. Where did these carloads go to?

Mr. McCARTY. New York, Pittsburg, Elmira, N. Y., and different places. I have a list of them in my pocket.

Commissioner PROUTY. I did not care for a list; I only wanted it in a general way. You could reach the same points by the Grand Trunk?

Mr. McCARTY. Yes, sir; and I did.

Commissioner PROUTY. Rather than patronize the Grand Trunk, where you get the cars for nothing, you preferred to use the Armour cars and pay their charge?

Mr. McCARTY. Yes, sir.

Commissioner PROUTY. Did you pay the full charge?

Mr. McCARTY. Yes, sir; from \$35 to \$50. It paid me to do it. I shipped to Mr. Fernald, as good a man as there is in New York. He said "Don't ship any way but in the Armour cars; I would rather pay it myself."

Commissioner PROUTY. What kind of cars did the Grand Trunk use?

Mr. McCARTY. Any kind they could get.

Mr. Loomis is also a grower and shipper. He says that he has been shipping for twenty years. I will quote from his testimony as follows:

Mr. URION. You have heard the testimony in respect to these refrigerator rates, service, etc. Will you state to the Commission in your own language and as briefly as you can your experience?

Mr. LOOMIS. My experience has been the same as the rest of them. I have been shipping twenty years. The shipments have got to be taken care of as they go through, and until Armour & Co. took care of them, we did not have that service.

Mr. URION. Has the profit to the growers and shippers in your community been enhanced by the use of Armour cars, notwithstanding the refrigerator charges?

Mr. LOOMIS. It has.

Mr. URION. They have made more profit by the payment of the refrigerator charge and getting the service than they did under the old arrangement?

Mr. LOOMIS. Yes, sir; because buyers came in there and we could not have them when we did not get the cars.

Mr. URION. How long have you lived in that community?

Mr. LOOMIS. The last twenty years.

Mr. URION. Have you talked with the growers there to some extent with respect to the refrigeration charges?

Mr. LOOMIS. I have.

Mr. URION. Do you believe you are expressing the general sentiment and feeling of the community?

Mr. LOOMIS. I know I am.

Gentlemen of the committee, consider, if you please, all these statements of California, Michigan, Georgia, and North Carolina growers on the advantages to them of exclusive contracts, and contrast their statements with the statement of Mr. Mead, who testified at the hearing in Chicago that he had not handled Michigan peaches since 1898. And yet he comes in here and professes to know all about the Michigan situation. That was four years later; and yet he directed his remarks to the situation and conditions in Michigan. His testimony I will feed to you:

Mr. DECKER. Have you been in the habit yourself, or your firm, of handling Michigan fruit?

Mr. MEAD. We are not large handlers of Michigan fruit. The last we handled was in 1897 or 1898.

I would say that it has been to the Michigan district that he has referred in all that he has had to say before this committee. I think it is unnecessary for me to consider further Mr. Mead's testimony before this committee, in view of the developments brought out by Mr. Robbins's statement. To do so would be to question the intelligence of the committee.

I request you to contrast also, if you please, the statements of these same growers and shippers with the statement of Mr. Ferguson, who applied his remarks at the Chicago hearing entirely to Michigan and to the Pere Marquette contract. He testified at that hearing, under pressure of cross-examination, that his firm had handled during the season in question—that was 1902—out of a total Michigan shipment of some 7,000 cars, only 10 cars. Upon being pressed further on cross-examination as to how much fruit they handled from all over the country, he said he thought between 40 and 50 cars.

Nearly every grower who has testified from Michigan shipped more than 10 cars, and the testimony that has been listened to by this committee, of the gentlemen from Georgia and West Virginia as to their shipments, shows that they run up as high as from 20 to 300 cars.

Mr. Ferguson also testified that the number of cars handled by his firm from all parts of the country was between 40 and 50. I ask you simply to compare his interest with that of the large growers, and to compare his interest and knowledge with the interest and knowledge of half a dozen or more shippers from peach and berry growing districts, each one of whom shipped from his own little district anywhere from 10 to 300 cars a season, and to contrast his experience and interest with the interest and experience of those who are directly growers and shippers.

Mr. STEVENS. I thought that Mr. Ferguson handled fruit on his own account.

Mr. URION. He handled, I believe, between 40 and 50 cars.

Mr. STEVENS. I do not know what his testimony may have been on that hearing in Chicago, but he testified here that he had handled fruit on his own account.

Mr. MANN. He testified under oath at this hearing.

Mr. STEVENS. He testified that he bought on his own account. Here is Mr. Ferguson's testimony. He was asked:

How many carloads of fruit did you buy in Michigan last year?

Mr. FERGUSON. I did not buy very many.

Mr. URION. About how many?

Mr. FERGUSON. I could not tell you without the records.

Mr. URION. About how many?

Mr. FERGUSON. Possibly 10 or 12 cars.

Mr. STEVENS. For what season was that?

Mr. URION. 1902 was the heavy Michigan season—the season which was under examination—which was under fire, at the Chicago hearing.

Mr. RYAN. Mr. Ferguson represented here a great many commission men.

Mr. URION. Yes, sir. I want to dwell on that presently, and this perhaps is an opportune time to do so. He stated that he represented some 12 associations. Two of those associations were fruit associations. One was the Western Fruit and Produce Dealers' Association and another was a national association. Eight out of those 12 organizations were retail grocers and retail butchers in Wisconsin and in Minnesota. Now, retail butchers and retail grocers do not use private cars as receivers in carload lots either of fruit or vegetables. I will read you the names of some of them.

The Duluth Fruit and Produce Exchange has 11 members, according to my information, which I sought after hearing his statement here. The Duluth Commercial Club, which is an organization of the business men and professional men of Duluth, has a thousand members. They have no interest in and know nothing about the receiving or shipping in private cars. The Superior Retail Grocers' Association has 56 members. The Duluth Retail Grocers have 130 members. The Lake Superior Butchers' Association has 162 members. The Minneapolis Butchers' Association has 125 members.

I have not been able to get the number of members of the Wisconsin Master Butchers' Association, but I have a telegram here which says, "Mr. Ferguson has not been authorized to represent the Wisconsin Master Butchers' Association." I merely mention this in passing. He came here representing a dozen associations. I have shown you the size of them, and I have shown you that 8 of the 12 are retail grocers and butchers.

Mr. RYAN. Did he represent all of those associations, the names of which you read there?

Mr. URION. Yes, sir; those are the associations he said he represented.

I do not think it is necessary to comment further on that matter. I think you know that retail grocers and butchers are not engaged as shippers and receivers of fruits and vegetables in carload lots.

While you, gentlemen, most of you have not heard the full testimony respecting exclusive contracts, it seems to me unnecessary for me to say anything more in justification of them. I think I have shown that the exclusive contracts are not only lawful—the Supreme Court has said that they are—but they are called necessary by the growers and shippers who are most affected, and who, as a general rule, even petition the railroads to make them, as was the case in North Carolina and in Georgia, where they joined in the preparation of the actual contracts, as was testified to here by Judge Gober and Mr. Hale.

Mr. RYAN. When you speak of exclusive contracts, you mean with the carrier?

Mr. URION. Yes, sir; with the carrier for the rental of the fruit and berry cars.

Mr. TOWNSEND. Does the shipper, then, have control of the cars?

Mr. URION. Yes, sir; I have a copy of this exclusive contract with me, which I will be very glad to read you.

Mr. STEVENS. You were to give us a list of the roads with which you had contracts. Have you that?

Mr. URION. Yes, sir; that is now in preparation; and there are some other things that were asked for that are also in preparation and will be ready shortly.

Also, there is the testimony of the North Carolina growers. Some of them were here the other day, I would say, and could not be heard, and were obliged to go home.

Mr. TOWNSEND. When you contract with the railroad, you make a contract with them for such cars as they need?

Mr. URION. Yes, sir; the full equipment that is necessary in the carrying of the fruit and berries. That is the only contract that is exclusive, and during the season.

Mr. TOWNSEND. Can you supply them always?

Mr. URION. We always have supplied them. Occasionally there are times when we fail, in which case we are liable to the growers. That has happened occasionally.

Mr. TOWNSEND. The car company is liable to the growers?

Mr. URION. Yes, sir. There was testimony here by some one who did not know, to the effect that the railroads were liable; but we are liable to the growers for failure to furnish the facilities, without regard to the car or the refrigeration.

Mr. TOWNSEND. The railroad has the exclusive disposition of the car after you furnish it?

Mr. URION. Yes, sir. We furnish the cars to the railroad.

Mr. TOWNSEND. Then, aside from having to furnish the cars—

Mr. URION. We furnish the refrigeration, an entirely different and independent service, which I will touch upon presently.

Mr. TOWNSEND. Do you know anything about the contract which the railroads make with the grower or shipper?

Mr. URION. For the use of the car?

Mr. TOWNSEND. Yes.

Mr. URION. I understand that the cars are furnished to the shippers the same as they furnish cars which they own. No additional charge is made for the use of these cars by the carrier to the shipper.

Mr. TOWNSEND. I want to get that clear in my head once more. After you make the contract with the railroad company or with the carrier, those cars, to all intents and purposes, belong to the railroad company?

Mr. URION. Yes, sir.

Mr. TOWNSEND. And they have the exclusive control of them?

Mr. URION. Yes, sir.

Mr. TOWNSEND. And determine who shall have them?

Mr. URION. Yes, sir.

Mr. ESCH. You say the exclusive contract only refers to fruit and berries?

Mr. URION. Fruit and berries; they are the only cars we furnish under the exclusive contract.

Mr. ESCH. That would exclude all vegetables?

Mr. URION. No, sir; in some districts they are furnished for vegetables also, but principally for fruits and berries.

Mr. ESCH. I know Mr. Ferguson referred to a letter from one of the shippers in reference to a carload of tomatoes from Arkansas, so that tomatoes would be included in the list.

Mr. URION. Yes, sir. There are sometimes exclusive contracts made for the carriage of vegetables, as well; but I speak of fruit and berries, because the larger portion of the cars are used for that purpose.

Mr. TOWNSEND. Is your icing contract a separate contract with the carrier?

Mr. URION. Yes, sir. I will reach that directly.

Mr. TOWNSEND. And that is under the same clause by which you are bound to the shipper or grower?

Mr. URION. Yes, sir. We are liable to the shipper if we fail in refrigeration. The railroad binds us to furnish that service to the grower and shipper.

Mr. TOWNSEND. Are you a party to the contract that the railroad makes with the grower or shipper when it gets those cars?

Mr. URION. No, sir; we are not.

Mr. TOWNSEND. Are you going to explain, then, how you are liable?

Mr. URION. Yes; later on I will reach that, under the head of refrigeration.

I now pass to the third alleged wrong or abuse, namely, exorbitant charges by the private car companies for the special service of refrigeration rendered shippers. I have touched very largely on this point already under the second head, so I will not read to you again the testimony of the Michigan growers.

Mr. TOWNSEND. I do not care to have you repeat anything that you have already gone over.

Mr. URION. No, sir; I shall not repeat. On this point you have listened to Mr. Robbins, who went into detail as to how a rate was determined, as to the many things necessary to consider in making a rate, as to the great hazards and risks of the business, and I shall attempt only to slightly amplify his remarks on the different requirements of the business which are necessary in order to render the service as it should be rendered in order to be of profit and service to the grower and shipper. The car line maintains at many hundred places in the different States icing stations or ice houses where the ice either from natural lakes or from artificial ice factories is stored. At each place a corps of men are employed, machinery for transferring the ice from the ice houses into the bunkers of the cars is maintained, and in addition thereto it owns and operates in different States artificial ice factories, and in other States natural lakes from which ice is cut, all of which is used at the many local points for the refrigeration of the contents of the cars when the same is so requested by the shipper.

The business is one of great hazard. Ice must be stored at the different localities where fruits and berries are raised, and in the different States between that section and the principal markets of the country, long in advance of the maturity of the crop and in sufficient quantity to anticipate the requirements of the shippers. At the present time

the ice houses in Georgia are being filled in anticipation of the next peach crop, which does not mature until in August.

Contracts have been entered into with ice factories in that State for many thousand tons of ice, which is now being manufactured and stored, and so at different points in different States from that section to the principal markets. There may not be a car of peaches moved from Georgia next season. Who can foretell whether or not there will be a crop? The same condition exists in every fruit and berry section of the country.

It has been testified, I believe, that in 1899, up to the last of March the ordinary crop of peaches was expected in Georgia, and then a frost came along and cleaned it out and there were very few cars of peaches shipped from Georgia that year.

Mr. TOWNSEND. And what did you do with the ice that you had?

Mr. URION. It all melted away. It could not be used.

Mr. TOWNSEND. Did you not dispose of it for any other purpose?

Mr. URION. No, sir; it all, practically, melted away.

Mr. ESCH. Now, your ice is oftentimes not where you desire it for refrigeration purposes, and you have, therefore, to transport it by rail.

Mr. URION. Yes, sir.

Mr. ESCH. In that transportation do you have any preferential rates with the railroad companies with which you make the exclusive contracts?

Mr. URION. No, sir, we do not.

Mr. ESCH. Do you pay the ordinary charges for that transportation?

Mr. URION. We pay the ordinary and regular rate for the carriage of that commodity.

Mr. TOWNSEND. You have ice houses on the railroad property?

Mr. URION. Frequently we have. We frequently rent land from the railroad company, on which we erect our ice houses. That is not always so but it frequently is so, because they generally have to be located along the right of way. If the ice is not used, if the labor—and it is skilled labor to a large extent, kept upon the pay roll the year around—is not required, the car companies suffer great loss.

As an illustration of the risks which we are obliged to take, I may mention again the Salt Lake and San Pedro Railroad, Senator Clark's road, running from Salt Lake to Southern California. We are building down there now to supply the refrigeration on that road an artificial ice factory on the edge of the desert at a cost of \$75,000. There are no fruits of any consequence raised along the line of that road now. Of course, the road will carry some fruit from southern California, but it is hoped that the fruit country along the line of that road will be developed, and our contract for the exclusive use of our cars on that road required us to put up this refrigeration plant and be prepared to meet the needs of the shippers in that respect.

Mr. ESCH. Where you store ice along the right of way, either from a manufacturing plant or a natural lake, either one or the other, do you maintain a crew of men the year around?

Mr. URION. Not at all of the points; no, sir. The principal crews are maintained in the field—I mean in the peach-growing district—at the season when the crop is being harvested. In many parts of the district we load these cars for the shippers. That is another service that is performed.

Mr. ESCH. Then the work would be at the time of the shipping of the crop, and at the time of the harvesting, of the ice crew?

Mr. URION. Not altogether.

Mr. ESCH. Of course, you may have a custodian there—

Mr. URION. No, sir; we have men there, but they are the common ordinary laborers, and are not included in my statement here. I refer principally to the men in the district. The contracts between the railroads and the car company bind the latter company to perform the service of refrigeration for the shipper if he shall require it, we being held responsible to the shipper in case of failure. And there is another element of risk. Large sums of money are paid out each year, legitimately, to shippers for failure to properly refrigerate. The refrigeration is done by our men, and frequently it is done improperly, and it will sometimes happen that the cars arrive at their destination with the fruit in bad condition, and if it is due to improper refrigeration, then we are liable to the shipper and have to meet his claim.

Mr. STEVENS. How can you be liable to the shipper when you have no contract with the shipper?

Mr. URION. I am going to touch on that quite fully later on. We are liable and, in fact, make contracts with the shipper for refrigeration. It may be an implied contract. But I will touch on that point very fully.

Mr. TOWNSEND. I wish you would explain that fully, because it is a very important matter, and I would like to know about it, in connection with this other.

Mr. URION. Very well. Mr. Robbins has well said that the Armour car line alone has invested at local points in the different States more than \$15,000,000 in tangible property. I venture the statement that if all private car companies' tangible property is considered, it amounts to over \$100,000,000. This is the industry which Congress is now asked to legislate out of business. To tear down the industry will not result in benefit to the public, but will result in the building up of another of like character by a few financially strong railroads.

Who are the best judges of whether a charge for service rendered is exorbitant or reasonable? Certainly the ones for whom the service is performed—the growers and shippers. It is unnecessary for me to repeat what the growers and shippers of the fruit and berry district of North Carolina said and did, and I have already read to you from the testimony of the Michigan growers who appeared before the Interstate Commerce Commission in Chicago last May, what they had to say on the subject.

I make the broad statement that only those who so far have been heard to complain are those who have the least interest in the matter, and who have absolutely no actual knowledge of local conditions or of general conditions, which is the basis for all charges made, but whose extravagant statements, in many respects bold misstatements (as has been demonstrated to the committee), are based upon no firm foundation, but rather upon lack of knowledge, and upon theories and mental calculations. I want now to read you an extract from the Hartford Day Springs, a little country paper published up in the heart of the Michigan district, which appeared after this general hearing of last year.

HE FAVORS ARMOUR CARS—H. L. GLEASON TALKS OF THE PROPER REFRIGERATION OF FRUIT.

There was a lively interest taken in the Interstate Commerce Commission sitting in Chicago last week. The inquiry was instigated by the National League of Commission Merchants against Armour & Co. for discriminating and exorbitant charges for refrigerator cars.

Looking at it from a commission merchant's standpoint, it would seem to be a hardship to them, for it certainly has a tendency to a more general distribution of the fruit, getting it nearer the consumer, and against concentrating it to the large centers and in the hands of the commission men; but in this, as well as other subjects, there are two sides.

As a grower and shipper I certainly know that the Armour cars, with their additional charges, have been the cheapest cars I have used in the last six or seven years. I have used upward of 250 Armour cars, and the loss has been only nominal consisting of a partial loss of the upper tier of one car, while in the use of other cars, to the number of about 150 during the same time, the loss from poor refrigeration and a poor system of handling has been in the thousands of dollars, some of which has been made good to me by the railroad company, but the heft of the loss falling on me. Most of the cars outside of the Armour cars have too small ice capacity to thoroughly cool a car of peaches. They may carry them through in condition to sell for a price, but not so high a figure as they would had they been in cars of large ice capacity and thoroughly cooled.

There are other advantages in using Armour cars: You can always know that you can get them; that they will be in good shape to load and not have to be condemned as not fit to use, leaving your fruit on your hands; you know that your car will have proper care in transit and not be allowed to pass an icing station without being looked to as to the ice, and the waste pipes kept free.

Then you may be loading a western-system car for Minneapolis or some other point near; you find that the Boston market is better; you run up a stump generally when you ask your agent to allow you to ship the car over any other line except the one that the car belongs to. But if you have an Armour car you can ship it in any direction and know you can take advantage of any market.

It seems to me that the fault of high charges is not so much with the Armour company as with the railroads. The latter ought to give the shipper of fruit as low a rate as they do on eggs or like perishable commodities requiring quick transportation. If you ship a car of eggs worth \$1,500 or more they will charge you second and sometimes third class rates, with no one to help stand any responsibility in case of loss, and eggs require as careful handling as does the peach.

But if you are shipping a car of peaches worth \$300 to \$400 and backed by Armour & Co., as far as proper refrigeration goes, they will charge you first-class rate or one and a half first-class rate east of Buffalo unless crated. If the railroad company would give us even second-class rate we could afford to pay Armour & Co.'s charges. I have not a dollar to give Armour & Co., but I am working for Gleason and family, and until the railroad company can give us some system of refrigerating that we can rely on, I shall shake hands with the representatives of Armour & Co. every time they come here in the peach season.—H. L. Gleason.

Mr. RYAN. You ship peaches in carload lots from the Michigan market?

Mr. URION. Armour & Co.?

Mr. RYAN. Yes, sir.

Mr. URION. I want to make the statement again that Armour & Co.—

Mr. RYAN. I mean your cars carry them?

Mr. URION. Oh, yes, sir; yes, sir.

Mr. RYAN. Do you have a fixed charge for icing those cars?

Mr. URION. Yes, sir; a printed schedule.

Mr. RYAN. Is that based on the number of tons of ice used?

Mr. URION. No, sir.

Mr. RYAN. Do you have any calculation of it?

Mr. URION. It is based on the combination of conditions which Mr. Robbins testified to very fully the other day. I am not a practical

man, and would not undertake to answer as to that, but he answers that question very fully.

Mr. RYAN. I did not hear him. I was wondering what price per ton was charged.

Mr. URION. It runs anywhere from \$2.50 to \$8 a ton.

Mr. RYAN. In a place like Buffalo or Cleveland, about what would you calculate?

Mr. URION. I could not answer that. Mr. Robbins has answered all those questions in detail. He is a practical man and knows the features of it.

Mr. TOWNSEND. Who wrote that article which you have just read?

Mr. URION. A man named H. L. Gleason, a grower and shipper in that district. I know the charges that have been made here, that these growers and shippers were brought down at our instigation to the hearing in Chicago. We did go for them, and asked them to come down, and it was perfectly proper that we should. We were brought in there without any idea of the charges against us. It was a general investigation. There was no formal complaint against us, and we did not know what we would have to meet, and we sent our men out among the growers and shippers to get as many of them as were satisfied, and to ask them to come down and testify, and they did it.

I have here another article, which I would like to have inserted into the record, although I will not take the time to read it, which appeared in the Oceana Republican, of Oceana, Mich., on Saturday, June 18, 1904. This was written by a man named T. S. Gurney.

The article referred to is here printed in the record as follows:

THE ARMOUR CAR LINE SUIT.

The Fruitman's Guide, of June 11, says "The Complaint" was that of the Michigan fruit growers and shippers against the Pere Marquette and Michigan Central railroads. They made a little error in the title. They should have said "the complaint was that of the commission merchants against the fruit growers and the P. M. and M. C. railroads. The Michigan fruit growers are satisfied with the Armour car line service and charges. The commission merchants are not satisfied because the service that the Armour car lines give enables the fruit grower to put his fruit in good condition on almost any market at profitable prices, and the commission men don't get a chance to handle the grower's fruit on a glutted market at ruinous prices. From about 1897 to 1901, inclusive, we had no good refrigerator service, and the most of the growers had to sell their fruit through commission men on a glutted market at ruinous prices, and many growers with fine crops wound up the season in debt for their baskets, while many good markets were bare of fruit. The fruit grower wants protection. The commission man can take care of himself. He has nothing to invest. Since the Armour car lines came, in 1902, the growers have received good prices and have made money.

The fruit grower, to be successful must have—

First. Perfect refrigerator cars when needed.

Second. The cars must be properly iced and cooled before the fruit is put in.

Third. The cars must be properly iced in transit when needed.

Fourth. A man along the route to see that the cars are kept moving.

A man at the destination of the car to report condition when opened.

The fruit grower can not ship to all points successfully and have poorer or less service than is heretofore mentioned. The service must be perfect. The Armour car lines give us the above service. Perhaps the service that we require is worth all they charge, and that their charges are as cheap as such services can be rendered. Until some other company or car line can furnish the grower with the same services as the Armour car lines give us for less money, we are satisfied and want no change, and in our opinion if the Armour car lines should be ordered off the road now, one-half of the fruit in western Michigan would rot on the ground and the other half sold at ruinous prices on a glutted market.—T. S. Gurney.

Mr. STEVENS. You do know that there were threats made against some of the growers by some of your agents?

Mr. URION. There were no threats. That matter was very highly magnified. One of the subordinates of the company met an old friend of his who had come down there, and jokingly they passed some words, and that was taken and magnified into a mountain.

Mr. STEVENS. Then you deny that occurrence, that that did actually occur, that your agent did make an implied or direct threat?

Mr. URION. I do, sir. I deny that he made any threat at all. I took him over to the office and examined him about it, and I believed his story, that he did not make any such threat, and I said to the Commission at that time that we would not tolerate anything of the kind. It was done by a subordinate who had no authority in the premises at all, if he had said it. If you only knew some of the things that are being resorted to in this fight which is being made by the middlemen you would not be surprised at some of the misstatements.

I now pass to the consideration of an entirely different phase of the subject. Mr. Robbins said to you, and the statements of others to which you have listened confirm his statement, that the business of the private car companies is twofold. First, the furnishing to railroads special cars of the refrigerator type, used by the railroads more especially for the fruit and berry traffic. Second, the rendering to the shipper in those cars a special independent service, that of refrigerating the contents, when the same is required by the shipper.

In this connection, it is not necessary that all fruits should be refrigerated. Large quantities of grapes are shipped from the western New York grape district not refrigerated at all. They are simply put into the cars and shipped under ventilation.

Mr. MANN. Are they generally shipped in your cars?

Mr. URION. Whenever they can get them. And of late years we have made exclusive contracts with the railroads operating in that section for the use of our cars. They take our cars and furnish them to the shipper, who uses them without any charge whatever from the railroad company, and as there is no refrigeration there is no charge made by the Armour car line. The shippers in those cars get the use of them just the same as though the cars were owned outright.

Mr. STEVENS. On the regular schedule of rates?

Mr. URION. Yes, sir.

The bill before this committee is to declare the private-car companies to be common carriers. According to the generally accepted definition a common carrier is one who undertakes for hire or reward to transport from place to place the goods of those who choose to employ him. I believe that is the definition generally accepted and recognized in the courts. Under this definition three things are necessary to charge one with the liability of a common carrier. First, he must be a transporter; second, he must make a contract, either express or implied, of transportation; third, he must receive a compensation for transportation.

Transportation is an inseparable incident of the undertaking of a common carrier. Now, the car companies receive no compensation, make no contracts of carriage or of transportation, nor do they transport anything. All they do is, first, to furnish to railroads special cars of the refrigerator type, to be operated by the railroads more especially for the transportation of the fruit and berry crop; second,

to render to the shipper in those cars a special independent service—that of refrigerating the contents when the same is required by the shipper.

How, then, can Congress legislate into the realm of common carriers one who, in point of fact, is not a common carrier? The Federal Constitution gives to Congress power to regulate commerce between States. It denies Congress the right to pass laws impairing the obligation of contracts.

I state this merely because it will develop later on that these exclusive contracts run, some of them, for many years to come. They are long-time contracts.

Let me first proceed to discuss the two-fold undertaking of the business of the private car companies, in the order just presented. Railroads may secure their equipment either by purchase or hire, so long as they furnish to the shippers on their respective lines the equipment necessary to meet the demand, and such equipment is of the character required for the business which they hold themselves out to carry.

The Supreme Court of the United States, in the Express cases, 117 U. S., 1, 24, 25, held—Mr. Chief Justice Waite delivering the opinion—among other things, as follows:

The railway company performs its whole duty to the public at large and to each individual when it affords the public all reasonable express accommodations. If this is done the railroad owes no duty to the public as to the particular agencies it shall select for that purpose. The public require the carriage, but the company may choose its own appropriate means of carriage, always providing they are such as to insure reasonable promptness and security.

No legislation, nothing short of absolute Government control, can change this, for if it were within the power of Congress to say that the railroads of this country shall own each and every car of their equipment, then Congress could also legislate as to where they should buy their cars and how much they should pay for them. The private-car companies are owners of special cars needed by railroads at certain seasons of the year, and only at certain seasons, and rent these cars to the railroads under rental contracts, for which they receive certain mileage, usually three-quarters of a cent to the mile. The railroads are thereby enabled to secure the necessary special equipment suitable for the transportation of fruit and berries for a short time—that is to say, during the fruit or berry season—in the locality through which the railroad operates.

These cars thereby become a part of the equipment of the railroads and are furnished to the shipper without any charge whatever for the use thereof. They are furnished just the same, under the same conditions, as are the cars which the railroads own outright. The contents of the cars, when loaded, are carried under the same tariff charges for transportation. The cars are, for the time being, out of the dominion and control of the car companies and under the dominion and control of the railroad that operates them.

The contracts of rental require the car companies to furnish to the railroads cars of the special character necessary for the carrying of fruits and berries, and in sufficient numbers to move the crop, be it great or small, binding the car companies to respond in damages for failure in this respect. This insures to the shipper at the proper time a sufficient number of suitable cars in which to move his crop. Bear in mind that the car companies neither transport the fruit or berries,

nor make a contract to transport the fruits and berries, nor receive a compensation for transporting the same. All they do with respect to the cars is to rent them to the railroads, being, in short, a car livery.

Mr. TOWNSEND. Who pays the taxes on those cars?

Mr. URION. The Armour Car Line.

The great benefit to the public, and even to the railroads themselves, can be shown by taking as an example Georgia, though the application fits to a greater or less degree every fruit and berry section in the United States. In that State the peach crop is moved in from four to six weeks; and the bulk of it is moved in about three weeks, although it strings along over six weeks. That peach crop required last year 4,000 individual cars, specially constructed for carrying fruits and berries. These cars, it may be well to say, can not be used in general freight, and they are not used, except in rare instances.

The railroads sometimes appropriate them and load them with light stuff. The cost of these cars at a fair valuation is about \$1,100. But for the private car companies who are able to furnish the equipment required, at the time required, and of the special kind necessary, the three railroads that operate in Georgia in the peach district would be compelled to invest nearly \$4,500,000 in the cars necessary to move that crop, for which there would be no use to which the railroads could put them on their own lines of railroad for the other forty-six weeks of the year. They would have to remain idle, if the suggestion which has been made to this committee is carried out that all the railroads be forced to own all their own cars of every kind, nature, and description.

If the railroads were able in the first place to invest such an enormous sum in cars for which they would have such a limited use for only a few weeks in the year, somebody would have to pay the interest on the investment, and who would it be but the shippers—the public? If the private car companies are to be legislated out of existence, and the large amount of actual money that is invested is dissipated, how are the public to be benefited thereby? You have been told: "Make the railroads own their own cars," but that is impossible, for it is well known to this committee that the fruit and berry sections are widely scattered all over the United States, and the seasons when they are at a marketable maturity last but a few weeks.

It is also well known to this committee that many times there are years of complete failure, and in other years a small crop, and in still other years extraordinarily large crops. How can one railroad meet these extraordinary conditions. One year they may require a thousand cars. The next year when the crop began to move it might be found that 1,500 cars were necessary. As an example of that, I will ask you to recall the testimony about the crop of last year. Last year in Georgia, up to the time the crop began to move, it was thought that there would not be over 4,000 cars of peaches move out of the State; but after they began to move it was found that the estimate was a thousand cars short, and a little over 5,000 cars of peaches went out of there, instead of 4,000, as was anticipated.

Five years ago, up to within a short time of the maturity of the peach crop in Georgia, the ordinary crop was expected, but, as is well known, there was a late frost that killed the fruit, and practically no peaches were moved out of that district because of the crop being

wiped out by this act of God. The reverse occurred last year, as I stated to you.

I ask again, could any railroad own cars of the character and sufficient in number for the carrying of peaches—provide against such a contingency, to say nothing of the enormous outlay of money required?

It is well known that there are more uncertain crops in this country than fruits and berries, and it is only because of the private car companies that the railroads all over the United States are able, by reason of arrangements or contracts, to provide against all these contingencies. The private car companies rent to the railroads, first in one section as the crop matures, and then in another as the crop there matures, and so on around the circle. It is due to the private car companies that the fruit and berry industry of this country has been developed to its present enormous proportions.

That was touched on very fully, showing the growth of the shipments from California and Georgia. I will not go into that, because it is a matter of record and can be inspected. If any such legislation as this committee has been requested to enact, or any similar legislation, could under the powers of Congress be enacted, which would be constitutional, it would lead to but one result, the forcing of two or three or more of the financially powerful railroads to do, through a bureau of the combined railroads, what the private car companies are to-day doing, furnishing these special cars to other railroads for the short season required. There could be no other result, for it is impossible that all the many railroads operating in this country own all the special cars that may be required for the limited time that they could be used for fruit and berry carrying. Would the grower and the shipper or the public be benefited at all by this change; and will Congress legislate to crush out one industry to further the interests of another?

Is it commerce between the States for one to own cars and rent them to the railroads who operate them as their own, the owner thereof having nothing whatever to do with the operation of the same, making no contract of transportation—transporting nothing? If this is commerce between States, Congress can enact a law declaring such owners to be common carriers and also placing them under the jurisdiction of the interstate-commerce act. Why may not the builders of cars for railroads be also declared to be common carriers and placed under the interstate-commerce act? The answer seems to be plain—because neither enter into contracts for transportation, neither transport anything; the most that can be said is that they furnish a facility in aid of transportation; but, as I shall show you later, by authorities of our Federal Supreme Court, this is not transportation.

Take the liveryman who may be located near a State line—in East St. Louis, for example—who hires his horses and wagons to one who takes them across the line into another State—Missouri—and pursues his vocation, which may in itself be interstate commerce. Does this subject the liveryman to interstate-commerce control, and can he be declared to be a common carrier unless he himself undertakes the transportation of something for a compensation? The answer, it seems, is plain. He can not be so declared. Is the owner of the private cars, in furnishing them to the railroads, more than a car liveryman? Where is the difference?

Mr. ESCH. Right there, I think you used the word "facility," did you not? You spoke of facility as not being transportation?

Mr. URION. I spoke of it as an aid, an incident, to transportation. A thing may be an aid or incident to transportation and yet not be transportation itself.

Mr. ESCH. You are aware of the language of the original interstate-commerce act, in which it is declared that the term "transportation" shall include all instrumentalities of shipment or carriage?

Mr. URION. Yes, sir.

Mr. ESCH. Would you differentiate your case under the language used in that act?

Mr. URION. Yes, sir. If the car is an instrumentality it is simply furnished to the railroads who operate it, and they operate it as an instrumentality of commerce. It is not an instrumentality of commerce until it is put into operation by the railroads.

Mr. STEVENS. Now, the testimony shows and your contracts show that the first thing you do is to ice the car initially?

Mr. URION. Yes, sir.

Mr. STEVENS. The second thing you do is to load the peaches?

Mr. URION. Yes, sir.

Mr. STEVENS. And the third thing you do, then, under that contract is to reice them in another State?

Mr. URION. Yes, sir.

Mr. STEVENS. And so on, from one icing station to another, all the way through?

Mr. URION. Yes, sir.

Mr. STEVENS. Now, is not that an instrumentality?

Mr. URION. Our supreme court in the Knight case, 192d New York, page 21, says that it is not. That was the cab case in New York, and I will quote from it in answer to that, although it is a little further along—Mr. Justice Brewer's opinion:

On the other hand, the cab service is exclusively rendered within the limits of the city. It is contracted and paid for independent of any contract or payment for interstate transportation. If the cab which carries passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to his carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce, and where will the limit be placed?

It is the character of the service, not the character of the carrier, that determines whether it is interstate commerce or not.

Would not the result have been the same if the service had been performed at an intermediate point—at Buffalo, Pittsburg, or Chicago—for the transportation from one railroad station to another of passengers en route, say, from New York to the Pacific coast, especially if the cab or omnibus service in question were being conducted by a third party? In that event the fact that the person rendering this special service did so pursuant to a contract or other arrangement with the railroad company would be wholly immaterial.

That is also borne out by the case of *Munn v. U. S.*, 94 U. S., 113, and the case of *Kentucky, etc., Bridge Co. v. R. Co.*, 37 Fed. Rep., 567. Further along I will touch on that fully. I have devoted one branch of this argument to the question of whether or not the railroads can be compelled to furnish this refrigeration. I want first to deal with the cars, and when I have dealt with the cars, then I will

deal with the refrigeration feature, and I will try to show you that the refrigeration is a local, independent service, in aid of, but not a part of, the transportation, and after leaving that subject I will then take up the third question, as to whether or not the railroads can be compelled to furnish this refrigeration. And I would then like to be permitted now to deal with the cars, and take up the other points in the order which I have stated.

Mr. STEVENS. Very well; continue.

Mr. URION. Many thousand freight cars operated by the railroads of this country are built with money advanced by trust companies and financial institutions on what are called car trusts. These cars are owned by the financial institutions or trust companies, who furnish them to railroads to be operated; payments for their use are made monthly, quarterly, or at fixed times, the title at no time passing to the railroad company until full payment is made. These cars, to show their ownership not to be in the railroads operating them, are plainly marked on each car, generally by an iron plate, in these or similar words. "Guarantee Trust Company, Owners." There are many, many thousands of those cars operated on the railroads of this country to-day.

Where is the difference between trust companies and financial institutions owning these cars, and the private car company? If one is a common carrier engaged in interstate commerce, because he furnishes cars to railroads to operate, then so is the other. There is no difference. If you legislate the private-car companies to be common carriers how can you exempt the trust companies?

But neither the trust companies nor the financial institutions who own and furnish cars to the railroads, nor the private-car companies who own and rent cars to the railroads, nor the car-building companies who build cars and sell them to the railroads, are engaged in interstate commerce. As I said to you a few minutes ago they only furnish means—facilities if you please—in aid of transportation, and our Federal Supreme Court has drawn a wide distinction between interstate commerce and facilities or means in aid of transportation. I cite you the Hopkins case, 171 U. S., 578. That was the Kansas City Stock Yards case, and later I shall go into that quite fully, and quote from the opinion of the court. I cite you also to the case of Hooper v. California, 155 U. S., 648, and the case of People v. Knight, 192 U. S., p. 21, of which I have just read a portion to you.

It seems unnecessary for me to dwell any further on the car question.

Mr. MANN. What are the terms under which these guarantee companies lease the cars to the railroads?

Mr. URION. Perhaps you have examined those leases and know them. They provide that the title shall at no time pass from the trust company until the car is fully paid for, and they are in the nature of a chattel mortgage, and must be filed as a chattel mortgage is. We have sold some of our old cars, which were worn out and were no longer fit for the fruit and berry traffic, to some roads.

Mr. MANN. Can you not see a distinction between a car owned, practically, by a railroad company—held under a lease, practically owned, subject to a chattel mortgage, merely—and a car owned by a company which is actually in business, furnished, as it may be demanded from time to time?

Mr. URION. There is a distinction, a legal distinction, but I think there is no difference in connection with their use by the railroads operating them.

Passing now to the second subdivision, refrigeration, which is one of the branches of the private car company's business. Mr. Robbins has told you, and it has been stated to you by others who appeared before you, that only a portion of the fruits loaded in these cars require refrigeration. It is true that a large proportion of them do, and when it is required by the shipper, the private car companies perform this service. It has been stated to one of the committee, I do not know whether it was before this committee or before the Senate committee, that there was no means by which the shipper could find out whether or not he had to pay anything for refrigeration, or if he did have to pay, what it would be. Mr. Robbins has produced and filed with this committee one of the printed tariffs for refrigeration which the car company issue each year, which shows the tariff charges for refrigerating these commodities from the shipping points.

They are distributed freely among the shippers of the different localities. They are given to the railroad agents at the shipping points. The car lines keep in each one of these growing and shipping localities a general agent, and other agents also, to look after the interests of the business. Those agents are supplied with the tariffs, and they pass freely among all of the shippers of that district, who have these tariffs. They are either in their own possession or easy of access, and they know where they can be found, and they know that the refrigeration of these cars is not undertaken, as a general rule, unless with the knowledge and consent of the shipper, with full knowledge of the refrigeration charge.

There have been several suits brought in Chicago and in the West by some of the people who have appeared before you, commission men, seeking to recover from the railroads these refrigeration charges that the railroads put on the bottom of their waybill and collect and pass over to the car companies, claiming that no contracts were ever made between the shipper and the car company for this refrigeration, and that they should recover back what they had paid. One of those suits has been tried, and it was found that there was an implied contract. There have been four suits tried in the city of Chicago alone, where the commission men, acting on their own initiative, have refused to pay the refrigeration charge to the railroad.

They have been sued, and in each case a recovery has been had, on the ground that the shipper, when he loaded his car, expected the service of refrigeration, knowing through the tariffs, which were either in his hands or easy of access, and at the railroad stations or shipping points, what those tariffs were, and on the ground that the shipper entered into an implied contract to pay that rate when he received the service. I mention this in passing, to answer one of the questions that has been put to me in respect to whether or not there was a contract between the shipper and the car company covering refrigeration.

Mr. STEVENS. Then your point is that when the shipper receives the service of refrigeration it is an implied contract with your company?

Mr. URION. Yes, sir; because the fact is, Mr. Chairman and gentlemen of the committee, that every one of these men who are engaged in growing and shipping knows absolutely that the service of refrigeration

eration is an independent one and one requiring an additional payment, and every one of them knows—I venture to say that none of them fail to know—what that charge is before the service is accepted.

Mr. TOWNSEND. Do you mean to say that you recovered—do you mean to say that you could recover this, for instance, if they did not pay it?

Mr. URION. The charge for refrigeration?

Mr. TOWNSEND. Yes.

Mr. URION. We did recover.

Mr. TOWNSEND. From the shipper?

Mr. URION. Yes; that is, we did in two cases recover from the shipper, but in the other the commission men themselves presumed to refuse to pay the charge without the knowledge of the shipper and owner of the freight.

Mr. TOWNSEND. Was not your carrier a party to the suit instead of you?

Mr. URION. In one of the cases he was.

Mr. TOWNSEND. What standing would you have in a court, if you had made a contract with the railroad company, and they, without any arrangement between the shipper and yourself, should put onto their bill a charge for icing? How do you have any standing in that case?

Mr. URION. The standing that we have is by intervening, to show that the service was rendered by the car line company, with the knowledge and consent of the shipper, and that there was an implied contract that he would pay for that refrigeration service. The railroads simply collect this refrigeration charge as a matter of accommodation, and it is put on the waybill as an additional charge.

Mr. MANN. Then your theory is that the railroad company acts as the agent of the shipper so far as your icing is concerned?

Mr. URION. In the collection of the charge?

Mr. MANN. Well, in ordering you to do the icing.

Mr. URION. The shippers themselves order the icing.

Mr. TOWNSEND. Did the railroads ever, of their own motion, institute a suit to collect this icing?

Mr. URION. For our account, yes, sir.

Mr. TOWNSEND. As a charge due to them, the railroads?

Mr. URION. No, sir; they did in two instances, because they had paid the charge over to us, and they instituted the suit on their own account.

Mr. TOWNSEND. In your contract with the railroad company have you such a provision as you have been speaking about?

Mr. URION. I will read to you, if you like, a copy of the contract which is entered into with the railroads. These contracts are practically all of the same kind.

(Reading:)

This agreement, made and entered into this 16th day of May, A. D. 1904, by and between Armour Car Lines, a corporation organized and existing under the laws of the State of New Jersey, hereinafter known as the "car line," party of the first part, and the Central of Georgia Railway Company, a corporation organized and existing under the laws of the State of Georgia, hereinafter known as the "railroad," party of the second part, witnesseth:

That for and in consideration of the sum of one (\$1) dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants and agreements hereinafter set forth, to be kept and performed by each of the parties hereto, it is hereby agreed as follows:

1. The car line agrees to furnish the railroad at such junction points on the rail-

road's lines as the railroad may direct, properly constructed fruit cars, in good order and condition, lettered "fruit growers' express," "Kansas City fruit express," or "Continental fruit express," sufficient in number and furnished in such order as to carry with dispatch the fruits and vegetables tendered to the railroad by shippers at stations on the lines of railway owned, leased, or operated by it for shipment under refrigeration during the life of this contract, and the car line also agrees to keep said cars properly iced while in transit over the lines of the railroad and its connections to destination.

Not less than sixty-six and two-thirds ($66\frac{2}{3}$ per cent) per cent of the cars supplied hereunder shall be forty feet long, and thirty-three and one-third ($33\frac{1}{3}$ per cent) per cent not less than thirty-six (36) feet long.

2. The railroad agrees and obligates itself to use the car line's cars exclusively in the movement of fruits and vegetables under refrigeration from points on the lines of railway owned, leased or operated by it during the life of this contract, so long as the car line shall furnish sufficient equipment to protect said business. But if because of some unforeseen emergency resulting in car shortage, it becomes necessary at any time for the railroad to furnish cars which are by it obtainable from other sources to meet the emergency, then the car line agrees to refrigerate such cars without prejudice, same as it does its own cars, at same charge per car which it makes in the case of its own cars.

Car line agrees to pay the railroad whatever amount said cars obtained to meet such emergency may cost the railroad in excess of what would have been the cost to the railroad if the car line had furnished the necessary cars.

Mr. TOWNSEND. Please read that once more.

Mr. URION. It is to the effect that in case of a temporary shortage of cars the railroads can get other cars, and the car line is obligated to reimburse them for what they spend over and above what those cars would have cost if we had furnished them.

Mr. TOWNSEND. Over and above what it would have cost them if you had furnished the cars?

Mr. URION. Yes.

[Reading:]

3. The car line's charges to be made for superintending, loading, furnishing refrigeration and handling the business generally under its supervision in Fruit Growers Express, Kansas City Fruit Express, Continental Fruit Express, or other similar cars used for the same, shall not exceed the basis of rates per car shown in the car line's tariff No. 365, in effect June 1, 1903, hereto attached, and made a part hereof.

It was testified or stated by some of those who were here during the hearings that the railroads, looking after the shippers and growers interested, are bound not to increase the refrigeration charge during the term of the contract.

[Reading:]

It being understood and agreed that the car line's charges made from stations on the lines of railway owned, leased, or operated by the railroad shall in no case exceed the charges made by the car line for refrigerating the same traffic from stations similarly situated on the line of other railroads in the same territory. The car line's charges referred to shall be billed as advance charges on each carload, and shall be paid to the car line monthly by the accounting department of the railroad, it being understood that in event property is refused and sold en route or at destination through no fault on the part of the railroad companies interested or the car line the car line will join the railroad companies interested in prorating on a revenue basis any deficit that may exist between the amount of transportation charges and the proceeds of sale.

4. The railroad shall pay the car line three-quarters ($\frac{3}{4}$) of one cent per mile run on its owned, leased, or operated lines of railway by each car of the car line used in said refrigeration service, both loaded and empty. The railroad further agrees to deliver promptly any car left over at the close of the season to such connections as are indicated by the car line, provided the car line shall not ask the railroad to haul its cars empty farther than the junction points at which the cars were received.

5. The railroad further agrees to furnish free transportation over its owned, leased, or operated lines of railway for use of officers and agents of the car line actually engaged in supervising shipments on its said lines of railway.

6. The car line agrees to be responsible to shippers or consignees for proper and adequate refrigeration of the cars furnished hereunder, and to hold the railroad harmless from loss and damage to contents of such cars arising from improper or inadequate refrigeration.

7. In event of general labor troubles, or other conditions beyond the control of the car line, which make it impossible to obtain movement of cars in sufficient numbers, or with sufficient dispatch to furnish at junction points cars necessary to protect the traffic hereinbefore described, then and in that case the railroad will take cognizance of the disability of the car line in construing the terms of this agreement.

8. The car line agrees that the use of its cars shall be open on equal terms to all shippers on the line of the railroad, and that the distribution and routing of the cars shall be made by the railroad.

9. This contract shall continue in force for the period of three (3) years from date.

In witness whereof, the parties hereto have caused this contract to be executed in duplicate by their proper officers the day and year first above written.

ARMOUR CAR LINES,
By GEO. B. ROBBINS, *Vice-Prest.*
CENTRAL OF GEORGIA RAILWAY COMPANY,
By W. A. WINBURN, *V. P. and T. M.*

CHICAGO, ILL.

Mr. TOWNSEND. Now, do I understand you to say that under that contract the shipper would have any right to come back on the car company for damages?

Mr. URION. They do have the right, and that right is exercised right along. I do not know of any cases where they go to the railroad. If they do, they are sent to us. They could go to the railroad. I received notice of a claim to-day from the Chicago office, a claim that has just been made on some stuff shipped out of a Georgia point, where the refrigeration is alleged to have been poor.

Mr. TOWNSEND. Have you ever had any suits on it, do you say?

Mr. URION. Yes, sir; we have.

Mr. TOWNSEND. What suits have you ever had where the shipper, under that contract, under no special contract that you have had with the shipper, but under that contract that you had with the railroad and the carrier, and let those cars out to the shipper, where the shipper could hold you for the damage?

Mr. URION. The case of Doctor Ross, of Macon, Ga., who sued several years ago to recover. Of course we did not put in a defense, because the liability was ours.

Mr. TOWNSEND. I can see readily where, under that contract, you would be liable to the railroad company.

Mr. URION. He took that on the ground of an undisclosed principal. But we absolutely never have contested a suit brought against us by the shipper, because we recognized him as our obligation.

Mr. TOWNSEND. I can readily understand why you might voluntarily recognize that as your obligation, but the question of enforcing that contract, as against you, where you have not been known as a party—what did you say about an undisclosed principal?

Mr. URION. I say the railroad might be liable as an undisclosed principal, if the shippers do not know it; but they do know it, and they come to us.

Mr. TOWNSEND. They are the disclosed principal and you are the undisclosed principal to the shipper.

Mr. URION. Yes; I say they can sue the railroads. If they should sue the railroads, however, we are liable.

Mr. MANN. Under the decisions of the courts in our State, repeatedly affirmed, there would be no question about the right of a third

person to sue on a contract between two persons where a promise was made by one person to another for the benefit of the third person.

Mr. URION. Certainly; that is the common law.

Mr. ESCH. You said you had four cases in Chicago of that action.

Mr. URION. That is where we sued to recover the refrigeration charges.

Mr. ESCH. Yes. Did those cases terminate in the lower court?

Mr. URION. No, sir; not all of them.

Mr. ESCH. Have any of them been appealed?

Mr. URION. The appeal in one of them has been noted, but not perfected.

Refrigeration is a local service. The service is performed at stated points where the cars are stopped, detached from the train, and the contents refrigerated, just as in the early days before the improved stock cars came into existence the cars were stopped, the cattle unloaded for rest, feed, and water. The service of icing contents of cars may aid transportation, but it is not a part thereof. It may be incidental to commerce, but it is not commerce itself. It has nothing to do with the transportation or with the use of the car. It is, therefore, not the subject of legislation here, for the authorities which I have heretofore quoted you hold that if the business is not interstate commerce Congress has no power to regulate it.

The process of icing, which constitutes the refrigeration, and for which a charge to the shipper is made, involves:

(1) The sale of the ice itself, which is either natural and taken from its place of storage, or artificial and supplied from the plant where produced; and

(2) The furnishing of labor necessary to transfer the ice to the receptacle therefor in the stationary car.

When these things have been performed the transaction is complete and the charge has been fully earned. Wherein is this transportation, or wherein is it interstate commerce? Certainly neither the ice itself nor the structure where stored or produced is an instrumentality of interstate commerce, nor can the persons who cut, store, or produce such ice, or who own structure and appliances devoted to the transaction, be said to be engaged in interstate commerce.

In this connection I want to call your attention to a leading case on the subject of what is in aid of and incidental to commerce, and yet is a purely local service. In the case of *People v. Knight*, 171 N. Y., 354, affirmed by the Supreme Court of the United States on January 4, 1904, just a year ago, and reported in 192 U. S., page 21. In this case the opinion of Mr. Justice Brewer disposed of a warmly contested litigation as to whether charges made by a railroad company engaged in interstate commerce, for the use of a cab service instituted and maintained by it for passengers going or leaving its station in the city of New York, holding they were for a purely local service.

It is self-evident that however broad and unlimited the language of a statute may be it must be construed so as to apply only to the matters and transactions within the domain of the law-making power, i. e., an act of Congress concerning commerce can be extended only to that which is strictly interstate commerce in a legal sense. That doctrine is laid down in the case of *Osborne v. Florida* (164 U. S., 650, etc.), *U. S. v. E. C. Knight Co.* (60 3d Rep., 306, affirmed 156 U. S., 1, 10,

and 16), *Nathan v. Louisiana* (8 How., 73), *U. S. v. Boyer* (85 3d Rep., 425).

How can it be contended that the person who owns the structure and the ice, and who employs the labor in removing the ice from storehouses or from factories at local points in the different States into the cars which are stopped and taken from the train for that purpose, has brought himself within the purview of the Federal power over interstate commerce?

Refrigeration may or may not be essential to the proper carriage of fruit. We care not, for essentiality is not the test as to whether the service is part of interstate commerce. Our Supreme Court so held in the *Knight* case.

For the reasons authoritatively declared in *Hopkins v. U. S.*, 171 U. S. 578, and other authorities which I have or will cite, it must conclusively follow that the matter of charges for icing and refrigeration is not one in respect to which Congress has constitutional authority to legislate. At best such services are purely accessorial in their character. In a legal sense they are separate and distinct from the contract of transportation and form no part of the commerce among the States which has been submitted to the jurisdiction of Congress.

The broad contention I now make is that a local service rendered in aid of and incidental to an interstate shipment, even if necessary and essential thereto, is not interstate commerce. While this general principle has been repeatedly recognized by our courts, it recently took distinct form and was the subject of elaborate discussion and review in the case of *Hopkins v. U. S.* (171 U. S., 578). The precise question involved was the legality of an association of live stock commission men at the Kansas City stock yards which undertake to regulate, among other things, prices for their services in caring for and looking after the shipments of owners. The live-stock shipments dealt with were largely the subject of interstate commerce. The Government proceeded against the members of the association under the anti-trust act, upon the ground that their arrangement was in restraint in commerce between the States. This directly presented the question whether the business of the association and that of its members was interstate commerce and subject to the Federal jurisdiction. The court in no uncertain terms said that it was not, and that the services rendered were local in their nature, in aid of, and incidental to interstate commerce, but not a part thereof. Among other things, Mr. Justice Peckham said in his opinion:

"On the contrary we regard the services as collateral to such commerce and in the nature of a local aid or facility provided for the cattle owners toward the accomplishment of his purpose to sell them. * * * Granting that the cattle themselves because coming from another State are articles of interstate commerce, yet it does not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce, or that their agreements among each other relative to the compensation to be charged for their services are void as agreements made in restraint of interstate trade. * * * Charges for the transportation of cattle between States are charges for doing something which itself constitutes interstate or commerce, while the charges of commission merchants based upon services performed for the owner * * * are not directly connected with, as forming part of, interstate commerce, although the cattle may have come from another State. Charges for services of this nature do not immediately touch or act upon, nor do they directly affect the subject of the transportation. Indirectly, and as an incident, they enhance the cost to the owner of the cattle in finding a market or they may add to the price paid by the purchaser, but they are not charges which are laid directly on the article in the course of transportation, and which are charges upon commerce itself.

They are charges for the facilities given or provided the owner in the course of the movement from the home site of the article to the place and point where it is sold (which is exactly what the icing of the contents of the cars of fruit). To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act so far beyond the meaning of the language used.

To hold such agreements void would, in our judgment, improperly extend the act to matters which are not of an interstate commercial nature. It is not difficult to imagine agreements of the character above indicated. For example, cattle when transported long distances by rail, require rest, food, and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception.

They say that in this decision. But, of course, the more modern cattle cars have come into service now, and the cattle consume the feed

and water en route. The cars are stocked, and hay, and corn, and water are put in the cars at local points, but that feed and water is consumed en route. So it is with the icing, the refrigeration. The ice is put in at local points, but is consumed—eaten up—en route.

I quote further from Mr. Justice Peckham.

Reading:

Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be a contract, even if the lands, or some of them, were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain sum, come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facility, and that its charges for transportation are enhanced because of an agreement along the line not to lease their lands to the company for such purposes for less than a named sum; could it be successfully contended that the agreement of the landowners among themselves would be in violation of the act as being in restraint of interstate trade or commerce?

Would an agreement between builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between States? Would an agreement between dealers in horse blankets to sell them for not less than a certain price be open to the charge of a violation of the act, because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced? Would an agreement among cattle drivers not to drive their cattle after their arrival at the railroad depot at their place of destination to the cattle yards where sold, for less than a minimum sum come within the statute? Would an agreement among themselves by locomotive engineers, firemen, or trainmen engaged in the service of an interstate railroad not to work for less than a certain named compensation be illegal because the cost of transporting interstate freight would be thereby enhanced? Agreements similar to these might be indefinitely suggested. In our opinion all these queries should be answered in the negative.

I have quoted largely from Mr. Justice Peckham's opinion, because of its applicability to the service of icing or refrigeration of the contents of the cars rented to and operated by the railroads, which service is one of the twofold occupations of the private car company. Unquestionably the case decides that a local service in aid of and incidental to interstate commerce, even if essential thereto, is not such commerce. That case shows many instances where necessary service in aid of transportation is local in its nature. There are many other cases decided by our Federal courts in perfect harmony with this decision, and I hope I may be pardoned for referring to a few of them later on because of their application.

You are asked to legislate the private car companies out of business by requiring the railroads to own their own cars and to furnish this local service in aid of and incidental to interstate commerce, when the Federal Supreme Court has said that even though it is essential to transportation and commerce it is not such commerce; and if it is not, how can Congress, under its constitutional powers, by legislation, require the railroads to perform this service, or how can Congress legislate that the private car companies shall not be permitted to continue to perform this service?

MR. STEVENS. Do you mean to say we can not compel a railroad to perform all the instrumentalities of service, and furnish all the facilities of carriage?

Mr. URION. Instrumentality, yes; but I contend that refrigeration is not an instrumentality. That is one of the subjects I expect to reach later on.

Mr. STEVENS. I beg your pardon. I did not mean to disturb your argument.

Mr. URION. It is evident I can not finish this evening.

Mr. MANN. Suppose you answer a few questions. If Congress has the power to compel a railroad company to unload cattle in order that they may be fed and watered, as a matter of interstate commerce, and as a part of the duty of the common carrier, has it not also the right to require the railroad company to furnish the pen in which the cattle shall be unloaded?

Mr. URION. They may furnish the pen. They furnish the car in which the fruit is to be carried.

Mr. MANN. This has nothing to do with the carriage. The pen has only to do with the feeding and the rest.

Mr. URION. Yes, sir.

Mr. MANN. If we have the power to compel the railroad companies to take them out for rest and feeding, would not we have the power to compel the railroad companies to feed them in the cars?

Mr. URION. For an additional charge?

Mr. MANN. For such charge as they should make for carrying cattle at certain rates.

Mr. URION. I believe that was discussed in this case—the Hopkins case.

Mr. MANN. In your case you do not simply assume to put ice in the car and let the car go on through to its destination, but you assume to put the ice in the car and to maintain the car iced to the end of its journey.

Mr. URION. Yes, sir; but at local points in different States.

Mr. MANN. I suppose you supervise it every moment, do you not?

Mr. URION. No, sir.

Mr. MANN. If you are responsible for damages, do you not supervise it all along the line?

Mr. URION. We are responsible for damages if the refrigeration is not properly performed at the fixed local points.

Mr. MANN. If the car is not kept properly refrigerated?

Mr. URION. Yes, sir.

Mr. MANN. Your employees keep up a constant supervision?

Mr. URION. No; but I think that I will reach that further on, as I discuss the question of whether the railroads can be compelled to act as insurers as to defects in the commodity itself.

Mr. MANN. Perhaps we can not compel them. Undoubtedly, as to lives tock, we can compel them to perform these duties, for we have had a law on the statute books for many years which they are very much opposed to, but which remains there.

Mr. URION. Then, can Congress pass a law requiring railroads to be responsible for the natural vices of the animals themselves?

Mr. STEVENS. Nobody pretends that Congress can do any such thing.

Mr. URION. That is on the same line.

Mr. MANN. We do not think so. But if the railroads should be held responsible for the inherent vices of an animal, and if it made a tariff based on that, and that grew up to be a custom of that road, should we not have the right to regulate it?

Mr. URION. If the railroads want to undertake to perform the act under their carrier responsibility they would.

Mr. MANN. The railroads in many places do so undertake.

Mr. URION. The common carrier is bound to perform that which it undertakes, fully, so long as it undertakes to do it. There is a Choctaw case—I do not remember the name, but it is somebody against the Choctaw Gulf Railroad—which I think answers your question.

Mr. MANN. Take the case that we have before us. Suppose the Central of Georgia Railroad undertook to ice cars from Georgia to Boston, and to provide that service, and did provide the service and put it in their original published tariffs, do you think that we would have any control over it?

Mr. URION. If they undertook to do it?

Mr. MANN. Yes.

Mr. URION. Yes; I think you would.

Mr. MANN. But do they not undertake to do it now by making an exclusive contract with you by which you agree to do it?

Mr. URION. That is the shippers?

Mr. MANN. Your contract is with the railroad company and not with its shippers.

Mr. URION. They designate in the contract that we shall perform that service when it is required.

Mr. MANN. You make an exclusive contract with the railroad company, putting yourselves in the place of the railroad company, by which you agree to perform that service.

Mr. URION. When the shippers require it; that is true.

Mr. MANN. That is the only time they could do it—when the shippers require it.

Mr. URION. But they make no charge for that.

Mr. MANN. I am only making suggestions; you understand.

Mr. URION. I understand.

Mr. STEVENS. But that is their business, is it not?

Mr. URION. I was going to say this, in respect to compelling them to perform the service; that is performing something that is not in itself interstate commerce, and they may contract with us, and assuming that the contract provides we shall perform it, it is a separate and additional services for which the railroad might make a separate and additional charge, if they performed it.

Mr. MANN. I never thought that New York Cab case was either a well-presented or a well-considered case; and it is constantly held that where railroads, as they occasionally do, undertake to deliver the freight; or where, in fact, they undertake not only to deliver it, but universally also practically to collect for it, that that is a part of the duty of the carrier.

Mr. URION. Under the law, that which a common carrier undertakes to do, he must do so long as he undertakes to do it—no more.

Mr. MANN. Your contract is not made with the shipper directly, except as an implied contract. You make a contract with the railroad company by which you agree to perform all this service—not local but through service—from one State to another.

Mr. URION. If Congress can legislate to require the railroads to furnish this service, assuming for the moment that they may do so and have done so through this contract with the car lines, then they can

compel the railroads to furnish food to the travelers crossing the continent, because food is necessary to sustain life.

Mr. STEVENS. I think that is right.

Mr. MANN. Yes, sir. Suppose that there was a desert from Chicago to San Francisco, and a railroad was built across the continent, and that railroad company undertook to carry passengers across the continent and made no provision anywhere for their water or their food, do you not think that Congress could regulate that matter and require the railroad company to do it?

Mr. URION. Has not the railroad company here made provision whereby the shippers of this freight may get these things, just as the railroads provide for the travelers across the continent, that they shall stop their trains and hold them long enough for the travelers to go into the stations and buy their own food?

Mr. MANN. But suppose that Congress would not wish to assume that authority in respect to passengers, yet, cases might occur where Congress would wish to, and then it would be possible?

Mr. URION. I doubt it. I have some examples as authorities on that subject which I will bring up later.

Mr. STEVENS. Have you finished the subject that you have been on?

Mr. URION. Yes, sir.

Mr. STEVENS. Then this would be a good place to stop?

Mr. URION. Yes, sir.

Mr. STEVENS. It strikes me, and I shall want to hear you on that point, that this refrigeration, and the supervision of it, and this loading which you do is an inseparable part of the contract of the carriage of these peaches—this fruit—and that the condition is such that it can not be divorced from it in anyway, and that nothing can change that condition.

Mr. URION. I will treat on that subject a little later on in my argument.

Mr. STEVENS. All right; that is what I want to hear.

Thereupon, at 3.50 o'clock, p. m., the committee adjourned until to-morrow, February 22, 1905, at 2 o'clock, p. m.

WASHINGTON, D. C.,
Wednesday, February 22, 1905.

The subcommittee met at 2 o'clock p. m., Hon. Fred. C. Stevens in the chair.

ARGUMENT OF MR. A. R. URION—Continued.

Mr. URION. I will now proceed to consider the question whether Congress can impose upon the railroads the duty of refrigeration. If it be shown that it is a purely local service, incident to but not a part of transportation or interstate commerce, it is plain that Congress may not impose that duty on the carrier. Mr. Justice Peckham said further in the Hopkins case:

For example, cattle, when transported long distances by rail, require rest, food, and water. To give them these accommodations it is necessary to take them from the car and put them in pens or other places for their safe reception. Such a service, whether rendered by the carrier or another, is not interstate commerce.

I wish to read section 4387 of the Revised Statutes of the United States respecting the unloading of animals being transported through different States to places of destination in order that they may be fed and watered. The preceding section, 4386, requires the railroads at certain intervals to stop their trains and unload the cattle. This section says:

Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same, at the expense of the owner or person in custody thereof; and such company, owners, or masters shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals.

The legislative suggestion is in recognition of the fact that cattle being transported a long distance must be fed and watered in order to preserve them, but there is no suggestion as to this feeding and watering of these cattle at intervals along the road, which is just like the icing of fruit for its preservation, that the railroad shall perform that service. It says that the owner must do it himself, upon the assumption, no doubt, that it was not regarded as a facility of commerce nor commerce itself, but merely an aid, an incident thereto.

Mr. STEVENS. Then, under your argument, that act is void?

Mr. URION. They have no jurisdiction to pass such an act. This act does not require them to feed and water cattle.

Mr. STEVENS. And if it be not commerce between the States Congress has no jurisdiction over it?

Mr. URION. They must recognize that. They do not require them to feed and water these animals at all. The owner has to do that. The act, of course, applies to commerce between the States. That is in the preceding section. I have read simply the section relating to feeding and watering.

Mr. STEVENS. If Congress has the power to compel one man or one class of men to feed and water stock, it has power to compel another man or another class of men to feed and water stock, has it not?

Mr. URION. Yes; but it has not the power to require the common carrier to do it.

Mr. STEVENS. Why not?

Mr. URION. Unless it be for an extra charge incidental to and in aid of it. In this case the railroad performed the service on the failure of the owner to do it, and then it had a lien on the cattle for the charge.

Mr. STEVENS. The point is the power to compel somebody to do it, and that somebody may or may not be the railroad.

Mr. URION. That, of course, was on humane grounds, and within the police power of the State.

Now, applying that reasoning to the refrigeration of the contents of a car of fruit. The car is required to be stopped, detached from the train at a local point, where it goes through the process of icing, which is first the sale of the ice itself; second, the furnishing of the labor necessary to transfer the ice to the proper receptacle in the stationary car. Mr. Justice Peckham said that that service, whether rendered by the carrier or another is not interstate commerce.

It was very properly said in the case of the State Tax on Railway Gross Receipts (15 Wall., 293), that "it is not everything that affects commerce that amounts to a regulation of it within the meaning of the

Constitution." The warehouses of these plaintiffs in error are situated, and their business carried on, exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in State as well as those engaged in interstate commerce, but they are no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally, they may become connected with interstate commerce, but not necessarily so.

Applying this ruling, a learned State court directly held that mere services rendered in and about property, though it be at the time the subject of interstate commerce, were not a part of such commerce. (*Stone v. Yazoo, etc., R. Co., Miss.*, 607, 639, 640.)

Products in the course of interstate shipment are frequently insured. This protects the shipment in course of transit. It aids commerce, but it is not a part thereof. Such insurance may be burdensome to the owner, and the charges exacted therefor so unreasonable as to increase the cost of the article, yet the insurance is no part of interstate commerce. It is a mere incident thereto. That is laid down in *Hooper v. California*, 155 U. S., 648, and the cases there cited.

In *Philadelphia, etc., Ins. Co. v. New York* (119 U. S., 110, 118), Mr. Justice Blatchford said of the Paul case:

As to the power of Congress to regulate commerce among the several States, the court said that while the power conferred included commerce carried on by corporations as well as that carried on by individuals, using a policy of insurance is not a transaction of commerce.

Upon an interstate shipment the buyer is interested in the question of the cost of shipment until the goods reach his storeroom. Drayage and cartage are necessary to bring the goods from the station to the store, or from one carrier to another en route. But in such case the service is local. In *Munn v. Illinois* (94 U. S., 113), this is so recognized, for in arguing that the elevator services were local and not a part of interstate movement, Mr. Chief Justice Waite said:

But they are no more necessarily a part of commerce itself than the dray or cart by which, but for them, grain would be transferred from one railway station to another.

That is speaking of elevators that cleaned the grain that was in transit and interstate movement.

States and cities exact charges, regulated and fixed by them, for the use of wharves, docks, canals, artificial locks and the like, whether the agencies used be owned by the public or private parties. These charges, and the right of the State to regulate the same, have always been sustained against the contention that the agencies were used as a part of interstate commerce. The ground upon which they have been sustained is, that the charge was for a local service in aid of commerce, and, though essential thereto, was not part of commerce itself.

An illustration may be found in the case of providing food for passengers in interstate transit. A common method of so doing is that adopted by the Santa Fe system, upon the lines of which, extending from the Great Lakes to the Gulf and to the Pacific Ocean, are established the well-known Harvey eating houses and lunch rooms. Unquestionably it is the duty of the carrier to give to the passenger an opportunity to eat, but the furnishing of that food by another at a stationary stand along the railroad is not converted into interstate commerce

because he who partakes thereof is upon an interstate journey or is being carried by an interstate carrier.

Hence, Congress can not say what charge shall be made for a meal or for the different articles at the lunch room. No one yet has been bold enough to suggest that such authority could constitutionally be conferred. Whenever the suggestion or assumption shall have been made, the plain answer thereto will be made that it is not interstate commerce. It has been so decided as to furnishing food, water, and rest to animals in the Hopkins case (171 U. S., 578) and the Cutting case (82 Fed., 529).

The illustration is pertinent to the question under consideration, for the furnishing of food to sustain the health and life of passengers; so the furnishing of food, water, and rest to live stock so as to preserve it in such condition that it may be slaughtered for human food, and that, too, while it is in transit. If, then, the services in either of the supposed cases are local in their nature and only an incidental aid to the interstate carriage, as distinguished from being a part thereof, how can the similar service rendered to preserve the existence of fruits as human food stand or rest upon different grounds?

Mr. STEVENS. Then under your doctrine all that Congress has power to compel the carrier to do is to provide the cars?

Mr. URION. To provide a sufficient car. Later on I shall expect to show that a common carrier ought not to be charged with the duty of a cold-storage business; that he ought not to be called upon to be an insurer against inherent defect in the commodity itself. I will reach that presently.

So, if as decided in *Hooper v. California* (155 U. S.), *Phila., etc., Insurance Co. v. New York* (119 U. S., 110), *New York Life Insurance Co. v. Cravens* (Sup. Ct. Rep., 962), the insurance on an interstate shipment of fruit, made to preserve and guarantee its existence for the owner, be simply a local service, how can the furnishing of ice to preserve the existence, thus rendering insurance unnecessary, be anything else?

If it were necessary to stop, sort and grade fruit, as it is with grain, so as to keep it from being destroyed by insects, and so as to have it in fit and proper condition for the market, manifestly this would not be other than a local service, for the courts so hold as to the similar elevator service. (*Munn v. Ill.*, 94 U. S., 113; *Stone v. Yazoo, etc., R. Co.*, 62 Miss., 607, 639, 640; *Budd v. New York*, 143 U. S., 517; *Brass v. N. Dak.*, 153 U. S., 191.)

What difference in principle is there between such method of preservation and the use of ice at local stations to preserve the fruit's existence? In both cases the services are to preserve in a fit condition for market the product in the course of interstate shipment. The use of the dray or the cart to carry the fruit from one carrier to another, or from the destination of the carrier to the store or sales-room of the commission merchant or buyer, is necessary and essential to enable him to obtain possession of the article which has, by local icing, been preserved for his use. Such cartage and drayage is not a part of commerce itself.

If Congress could exercise dominion over the service of icing and refrigeration it could as well exercise dominion over the commission merchant who charges drayage for hauling the fruit from the freight yard of the delivering carrier to his store.

Wherein is such service more of a local nature in aid of commerce than the icing of the article so as to preserve it for such cartage?

When fruits are shipped by vessel improved facilities are found in wharves and docks, so that the shipment may be there conveniently preserved and handled until actually loaded upon the vessel. The wharfage and dockage service is local and in aid of but not a part of commerce. (Hopkins case cited; *Packet Co. v. Keokuk*, 95 U. S., 80-85; *Sands v. Manistee Imp. Co.*, 1, 2, 3 U. S., 288, 295.)

Manifestly, if, as part of the accommodation, the wharfage or dock company, or the municipality operating the same, iced the fruits to be shipped, the act of icing would not convert the local service or aid into an act of interstate commerce.

Mr. STEVENS. But a vessel would have to do that work.

Mr. URION. To ice it?

Mr. STEVENS. Yes.

Mr. URION. No, sir; I contend not. And the differences are those which I will touch later in connection with the inherent defects of the commodity itself. (*Lindsay and Phillip Co. v. Mullin*, 176 U. S., 126, 146, 154.)

Like principles should and undoubtedly do apply to warehouses.

At stations along the lines of railways newsboys ply their vocation and furnish interstate passengers with reading material, thereby facilitating and aiding such travel. Is this a local service, and has Congress power to fix the charges to be paid for periodicals or to say what prices shall be charged for daily papers? The telegraph companies send messengers to meet trains so as to deliver and receive from interstate passengers messages for telegraphic transmission. This aids and facilitates interstate travel, yet has Congress the right to fix and determine the price that shall be paid for the messenger service if, instead of doing the work gratuitously, the telegraph companies should decide to charge therefor?

It is true that the icing question continues its operative effect after the transportation has been resumed. This is an immaterial consideration. There are cars in which cattle can be fed and watered without being unloaded, and in which the food and water can be consumed en route, part, indeed, in one State and the remainder in another, but can Congress regulate the price which a farmer at a station along the road may charge for the hay and water put into the car at the local point to be consumed en route?

Again, blankets and other coverings are often put over horses while being transported by rail, and resulting comfort and protection attend the animals from one State to another. But it can not be said that Congress may fix the prices to be charged for this merchandise.

Coal is absolutely essential to the propulsion of locomotives. It is loaded locally at local points en route, just exactly as ice is put into the cars containing fruit to refrigerate them, but the coal is consumed in transit. So is the ice that refrigerates the fruit. Is the local fuel merchant who sells to the railroads the coal burned in these locomotives, and which is loaded at local points, engaged in interstate commerce? Can this body declare him to be a common carrier, or fix the prices he may charge for his coal? Or order him to desist asking a given price? Or accomplish the same result indirectly by enjoining the railroad from paying him a given rate per ton?

We have taken these illustrations, as they are services rendered for goods supplied while the train is stopped, just as the refrigerating service is rendered while the train is not in motion. We might, however, well apply them to the dining-car service and the service of the newsboys on the moving trains, for, as said in relation to feeding and resting live stocks where a State line ran through the stock yards, so that at the time of the service the animals were passing from State to State, the character of the service determines the question and not the accidental fact that the service may be rendered while passing from one State to another.

A decision by Congress that it may legislate authority to regulate refrigeration means that it must also legislate authority to regulate feeding, watering, and resting live stock, insurance and wharfage and dockage fees, drayage and cartage charges, the prices to be fixed for food at dining stations or lunch stands or upon dining cars, periodicals, cigars, and, indeed, every service rendered to a train beyond the powers granted to Congress by the Constitution as to satisfy even the wildest dreams of the most imaginative legislator. Indeed, in such an event what would there be left which could be said to be a local service incident to interstate shipments?

Mr. STEVENS. That is about the size of what some of us contend can be done.

Mr. URION. I am coming now right down to fruits, and the inherent defects in the commodity itself, and the natural vices of animals being transported.

Mr. STEVENS. It strikes me if we have not any right to legislate as to the care of passengers and their proper food, and as to compelling railroads to attend to those things if necessary—of course for a proper compensation—we had better quit the regulation of interstate commerce.

Mr. URION. Well, I do not think Congress can regulate and require the railroads to furnish food to passengers en route any more than they can compel the railroads to furnish insurance and insure against the act of God on the commodities they are carrying. Whatever damages might result to the fruit loaded into one of the cars furnished by the railroad company to the shipper, if the car is a proper and suitable one for the purpose, he can not be charged with damages resulting from the ordinary nature and inherent decay of the fruits in that car in the course of shipment.

Thus, in *Hutchison on Carriers* (2d ed. by Mechem, sec. 216a), it is said:

So, obviously, the carrier, if not himself at fault, can not be held liable for losses which have been caused by the inherent nature, vices, defect, or infirmity of the goods themselves, as in the case of the decay, waste, or deterioration of perishable fruits, the evaporation of liquids, the natural death of an animal, the vicious or uncontrollable nature of live stock, and the like. These cases are frequently classed under the head of "losses by the act of God," and they are clearly within the same principle, though they are treated separately.

The Supreme Court has sustained this rule, for in *Clark v. Barnwell* (12 How., 272, 282) Mr. Justice Nelson said:

For, it has been held, if the damage has proceeded from an intrinsic principle of decay, naturally inherent in the commodity itself, whether active in every situation, or only in the confinement and closeness of the ship, the merchant must bear the loss as well as pay the freight, as the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event.

In *The Alesia* (35 Fed. Rep., 531) it was said:

In my opinion, in a case like this, where two out of three holds of the steamer contain general cargo and the other green fruit, the holds being separate and distinct, and constructed of iron, it is too much to require the steamer to suspend the unloading and loading of holds wherein was no fruit in order to preserve fruit in the remaining hold from danger of injury by frost. The risk of the fruit in No. 3 hold being frozen while the other holds were open for the purpose of discharging cargo from these holds, in my opinion, should be held to be the risk of the shipper, and not of the ship—the bill of lading having exempted the ship from responsibility arising from the act of God.

The question was more recently discussed in the case of *The Prussia*, and I will quote the language of the court very fully there, because it touches upon fruits and meats.

By what rule of law is the case governed? A common carrier warrants that he will deliver safely at their destination all goods whose carriage he undertakes, loss or injury from inevitable accident, or irresistible force, and lawfully exempted cases excepted. But this warrant has never been thought to cover injury to goods from every cause, but rather to insure against any and all injuries, acts, and conditions extrinsic to the goods themselves. Against any or all injury resulting from the quality or constituent element of the goods it does not insure. For every outward act or agency, save those excepted by law or contract, it is absolutely responsible; but for deterioration of quality, arising from the nature of the thing, it is not liable. If the damage proceeds "from an intrinsic principle of decay naturally inherent in the commodity itself, whether active in every situation or only in the confinement and closeness of the ship, the merchant must bear the loss as well as pay the freight."

Will Congress undertake to make a railroad common carrier an insurer against the natural, inherent decay of a commodity itself, or, as more aptly put in the case of *Clark v. Barnwell* last cited, losses by the act of God?

So, in the case of animals, will Congress undertake to make the railroads insurers against the progress of disease, or for injuries arising from their own vice or timidity; or, in the case of grain, make the railroad insurer against heating or weeviling of that grain in transit; will Congress make the railroad an insurer against the fermentation, acidity, or effervescence in fluids when such is the result of the ordinary processes going on in the things themselves without the aid of causes introduced by the carrier?

If Congress shall, by legislation, require the railroads to furnish refrigeration and thereby insure the fruit against decay, natural and inherent in the fruit itself, then it makes the railroads insurers against all of the things I have mentioned and against losses by the act of God.

It has well been said by one of the modern writers that a carrier can not be required to create an artificial climate adapted to the preservation of goods or to warrant that the heat or cold should be unvarying and efficient. Such an obligation upon a common carrier never existed, and there is no judicial suggestion of its propriety, for the law-makers will not assume that a carrier undertakes to add the business of cold storage to his regular occupation.

Mr. MANN. What are you reading from?

Mr. URION. I am reading now from the case of "*The Prussia*," in Eighty-eighth Federal Reporter.

Mr. MANN. Decided by what court?

Mr. URION. Decided in the United States circuit court, by Mr. Justice Thomas.

Mr. MANN. What was the date of it?

Mr. URION. I do not know. I have not the decision before me. I am quoting from a former brief of mine.

Dressed beef has a tendency to decay. Will Congress undertake to impose upon the railroads the duty of furnishing refrigeration to care for and preserve dressed beef while being transported by it from point to point?

Nowhere has there been a suggestion of any legislative attempt to make it the primary duty of a common carrier to undertake to insure against loss in the way of defects inherent in the commodity itself or the act of God. The most that has ever been attempted by way of legislation has been to make it the primary duty of a common carrier to introduce or permit the introduction of no agency which will excite or develop such a tendency. If, therefore, the subject is to be dealt with by Congress in a manner within its powers under the Constitution, there is no doubt that refrigeration can not be made a part of a carrier's duty. Refrigeration is a mere collateral undertaking. Our Supreme Court has said it may be incidental to commerce, but it is not commerce. Refrigeration, even if it be essential to the shipment of perishable fruits, makes no difference, for essentiality of a service is not the test in determining whether such service is transportation or is commerce.

An interesting case on the point which was suggested yesterday by Mr. Stevens, that the refrigeration was performed at various points en route, is that of *Kelly v. Rhodes* (188 U. S., 1). This was where a band of 10,000 sheep were being driven across the State of Wyoming in a direct route, passing from Utah to Nebraska, going 9 miles a day, and stopping at intervals and being allowed to graze.

Would a statute of Wyoming fixing the amount to be paid for pasturage on lands belonging in that State or to private persons by the owners of such a flock of sheep as was there considered to be constitutional as a regulation of interstate commerce? Or would such a charge be regarded as merely one for a local service, notwithstanding the fact that the sheep in question were at the time subject, in other respects, to the regulations affecting interstate commerce?

Mr. MANN. Might I ask you a question there?

Mr. URION. Yes, sir.

Mr. MANN. Sugar, of course, will melt with water falling on it. Do you think a railroad company is bound to furnish covers to prevent rain from falling on sugar?

Mr. URION. The railroad company is required to furnish the necessary and proper equipment for carrying the commodity which it undertakes to carry, unless there is an inherent defect in the commodity itself to which he adds nothing which excites or adds to it.

Mr. MANN. There is an inherent defect in sugar to which he adds nothing whatever unless he leaves the cover off.

Mr. URION. He would be required in that case, would he not, to furnish only a car that had a cover to it, and not a flat car?

Mr. MANN. I say the question is whether Congress can require the carrier to furnish a covered car.

Mr. URION. I think it is already settled that the carrier must furnish the proper equipment for carrying the commodity which he holds himself out to carry.

Mr. MANN. Is not refrigeration a necessary equipment for the carriage of peaches from Georgia to Boston?

Mr. URION. It is not a necessary element. It is an aid. It is an aid, and preserves the fruit in transit.

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Mr. MANN. Is it not absolutely essential?

Mr. URION. It may be essential.

Mr. MANN. Is it not absolutely essential in the carriage of peaches from Georgia to Boston that they be refrigerated?

Mr. URION. Yes, sir; for that distance it is.

Mr. MANN. That being the case, has not Congress the same power to require ample accommodations to be furnished to preserve the fruit so far as can be properly done by further aid as it has to require what is necessary to preserve sugar from rain?

Mr. URION. And insure against the inherent defects in it? No, sir; I believe not.

Mr. MANN. They do not insure. They only furnish such accommodations as they can.

Mr. URION. I think the Supreme Court and our text writers who have studied that question take a contrary view of it.

Mr. STEVENS. I have here a citation from a case of *The Prussia*, 93d Federal Reporter, page 837. You have cited another case but from another volume (88 Fed. Rep.), 531, and an entirely different case. I will read this:

It is the duty of the carrier by water, when he offers a vessel for freight, to see that she is in a suitable condition to transport her cargo in safety; and he impliedly warrants that this duty has been fulfilled. And when he proposes to transport across the Atlantic a cargo of frozen meat, we agree, as was adjudged in *The Maori King* (1895), 2 Q. B., 550, and *Queensland National Bank v. Peninsula and Oriental Steam Navigation Co.* (1898), 1 Q. B., 567, that he must be taken to stipulate with the shipper that the vessel is provided with suitable apparatus of requisite efficiency to enable him to deliver it in proper order.

Mr. URION. Yes; that is, where he contracts to do it. He is not obligated; but if he binds himself to furnish refrigeration, he must do it.

Mr. STEVENS. No, this language is that he must be taken to stipulate—

Mr. URION. In his contract.

Mr. STEVENS. It assumes that he stipulates to provide proper apparatus.

Mr. URION. I do not recall having seen that case. The matter is touched on in this one I have cited.

Mr. STEVENS. The language is here: "When he proposes to transport across the Atlantic a cargo of frozen meat, we agree * * * that he must be taken to stipulate," and so forth. Is not that an implied contract?

Mr. URION. Exactly; when he takes frozen meat and agrees to carry it safely, he must.

Mr. MANN. Then what difference is there when the railroad takes a cargo of peaches?

Mr. URION. It is a matter of contract.

Mr. MANN. No.

Mr. URION. I think you will find it is a matter of contract on the commodities going abroad in these various vessels.

Mr. MANN. The carriage of meat abroad being a well recognized trade, do you think that Congress could regulate that in any way on vessels entering the ports of this country?

Mr. URION. I think it is altogether a matter of contract, under the decisions and under the law.

Mr. MANN. Very well. But where a trade grows up and a custom grows up which becomes incorporated into the trade, which was not known ten or fifty or one hundred years ago but which still becomes recognized as a necessary part of that trade and that necessity is recognized by the common carriers themselves, do you say that Congress has not the power to regulate that?

Mr. URION. I doubt it.

Mr. MANN. I do not have any doubt about it whatever.

Mr. STEVENS. Here is a case in ninety-third Federal Reporter, the case of *Martin v. Southwark*, where it was held that a water carrier holding itself out as a common carrier of perishable goods has the initial duty of providing and operating proper refrigerating apparatus for the safe carriage of such commodities.

Mr. URION. What case is that?

Mr. STEVENS. It is the case of *Martin v. Southwark*, (191 U. S., 1). Of course we can not settle that question here. You had better proceed with your statement.

Mr. URION. I have nothing further to say on the subject at this time. I thank you, Mr. Chairman and gentlemen.

STATEMENT OF MR. THOMAS B. FELDER, JR.—Continued.

Mr. FELDER. Mr. Chairman, the committee has very kindly extended to me a good deal of time, still I would like to be heard now briefly.

Mr. STEVENS. Proceed, then.

Mr. FELDER. On the question just propounded by the gentleman from Illinois in relation to the duty of carriers to provide facilities for freight, permit me to say I have taken occasion to look into the question to some extent, and the result of my investigation is that it is within the jurisdiction of Congress to require carriers to furnish ordinary facilities for the transportation of freight. For instance, take the case referred to by the gentleman from Illinois.

It would be necessary to cover the sugar, because if it was not covered it would be totally destroyed by rain and moisture. I do not understand that it can be made the duty of the carrier to furnish any extraordinary devices for the protection of perishable commodities, and I put this as an illustration—

Mr. STEVENS. Would you not admit that it was obliged to furnish ordinary devices adapted to the particular commodity?

Mr. FELDER. Yes, sir. Of course that must be conceded. Let me put this case. Ice is, per se, a very perishable commodity. Railroads are required to transport ice. I take it that the railroads engaged in interstate commerce could be required by Congress to furnish a reasonably well constructed car to be used in the transportation of ice, but I assume that no man will contend for a moment that the railroads can be required to furnish specially constructed refrigerators, so that ice will be delivered at its destination in the same state of preservation that it was in when received.

Mr. MANN. You admit that if the railroad company attempted to carry ice on a flat car with the sun shining on it they would not permit it, and Congress could regulate it?

Mr. FELDER. As to the carrying of freight and the furnishing of facilities I contend that Congress has no right to require railroads to

go further than to furnish the ordinary facilities for the transportation of freight.

Mr. MANN. Is not the furnishing of ice an ordinary facility for the transportation of peaches from Georgia to Boston?

Mr. FELDER. No, sir.

Mr. MANN. Can you transport peaches from Georgia to Boston without ice?

Mr. FELDER. My opinion is that you can not by freight.

Mr. STEVENS. During the peach season?

Mr. FELDER. During the peach season.

Mr. MANN. So that they would be of any value at all on their arrival?

Mr. FELDER. Nor could you transport fresh beef without ice.

Mr. MANN. That is exactly it.

Mr. FELDER. But I believe for Congress to require the carrier to furnish this ice would be requiring the carrier to furnish extraordinary facilities for the transportation of these things, and this Congress has no constitutional power to do.

Mr. MANN. You say extraordinary facilities; but I ask you whether the furnishing of ice is not an ordinary facility in the transportation of peaches?

Mr. FELDER. I answer that in this way: Some years ago icing was unknown; then peaches, in limited quantities, were shipped, and when they reached their destination some of those peaches were decayed and others were not.

Mr. MANN. Were peaches, a few years ago, in any quantity whatever shipped from Georgia to Boston by freight?

Mr. FELDER. No, sir; they were shipped by express.

Mr. MANN. They were not shipped by express?

Mr. WANGER. He says they were shipped by express.

Mr. MANN. So that it shows his proposition has no application to that shipment. The business has grown up now. No one would have imagined fifty years ago that a steamship company would be required to furnish refrigeration for the shipment of meat from New York to Liverpool.

Mr. FELDER. Precisely so.

Mr. MANN. Do you think we can require it now?

Mr. FELDER. Without answering that question directly I will make this observation. Of course that is not now up for consideration, because nothing of the sort is embraced in the bill introduced by the distinguished chairman. But if you require the railroad to do it you have got to give the railroad extra compensation for doing it.

Mr. STEVENS. There is no question about that.

Mr. FELDER. But this is the question before this committee, and this is the question that we are discussing, namely, whether or not the Federal Congress has the constitutional right to declare the private car companies engaged in this sort of commerce to be common carriers, and to put them under the jurisdiction of the Interstate Commerce Commission. That is substantially what we are discussing, not what Congress might require the agencies of interstate commerce to do.

Mr. MANN. Just one moment. Is not this the question before Congress, namely, whether, finding that refrigerator car lines are now engaged in furnishing ice and thereby preserving fruits on freight

traffic passing from one State to another, we can not regulate the practice that we find is in existence?

Mr. FELDER. I say that you can not, and I want, in this connection, to answer a question which goes to the very fiber, the gist, of this matter, the question which was propounded by Mr. Townsend, the gentleman who sat here yesterday, to Mr. Union. The thing recurs to that, at last: What is the relationship between these various parties under this form of contract? Mr. Townsend asked Mr. Union if it was possible for the private car lines, under the form of contract which was put in evidence, to bring suit for the refrigerator charges when the shipper and the refrigerator line were not parties to the contract, or whether or not he would have to sue the railroad, and who would have to be sued in such case.

Mr. MANN. It is so well settled in my State, and I think in most of the other States, that I do not think it is worth while to discuss it.

Mr. FELDER. What is that?

Mr. MANN. I say that is a question that is so well settled, as a legal proposition, out in my country, that it is not worth discussion.

Mr. FELDER. And yet this whole question hinges on the relationship between those parties, and it is dual in its nature.

The principle of law does not exist in any one State, but is universal, so far as I know that under this form of contract, where the railroad undertakes to contract with the private car line to furnish refrigeration, the railroad is acting in the capacity of agent for the shipper, and the shipper is his undisclosed principal, and where the service thus contracted for is performed by the railroad, the railroad is merely an agent, and is not a proper or a necessary party to any suit growing out of breaches of the contract. When the contract is made, and it develops that the contract is made by the railroad for A, B, or C, then the cost of the refrigeration can be sued for and collected without making the railroad a party, the shipper being the undisclosed agent of the principal.

Now, on the other hand, if the railroad contracts with the refrigerator company to furnish this icing, and it is improperly done by the refrigerator company and as a result of the improper icing, or improper re-icing of the car, damages ensue, why, clearly the railroad is neither a necessary nor a proper party, because in that transaction the railroad is the agent for the undisclosed principal, and the undisclosed principal is the private car line, and the shipper can sue originally the private car line for any damages that may have ensued.

Now, let me call your attention just briefly to the character of the contract, and I think the reason will become apparent why Congress has nothing to do with these car lines. As I say, the relationship is dual. The railroad leases from private car lines exactly as they do from trust companies, and that question was fully gone into a day or two ago—as to how they were leased from trust companies. The railroad leases these cars from the car lines, and they do not receive a weekly rental or a monthly or a yearly rental for those cars, but they receive three-fourths of 1 cent for each mile traveled. Now, the car thus becomes a part of the system of cars of the railroad company which leases it, and if that car becomes derailed in transit and the fruit with which it is loaded is destroyed, the railroad is responsible because that car is a part of the property of the railroad. But if, under this

contract, the refrigeration—the icing—is improperly done, if the refrigeration is poor and damage ensues to the shipper, the private car line is responsible in damages, and the suit is brought against the private car line.

Now, let us see about the character of the service. I have not the decision before me, but some court of last resort has held, and I have it upon my brief, that where a man is engaged in furnishing coal in more than one State for the agencies of interstate commerce—for the engines on a railroad—he is not engaged in interstate commerce, because the trains thus engaged are merely the instrumentalities, the agencies of commerce. The things that they carry constitute the interstate commerce. In other words, the train that starts away from Fort Valley en route to New York with these cars attached is not interstate commerce; it is the agency of interstate commerce.

And to illustrate that, every single, solitary one of those cars, including the Armour cars, is subject to State taxation from the time it leaves Fort Valley until it returns, and the Supreme Court of the United States has pointed out the way in which the calculation must be made to subject those cars to taxation. But the things carried in those cars are not subject to taxation. That is the interstate commerce. And we get these two things confused. The railroad is the agency of interstate commerce, while the thing it carries is the interstate commerce. One is subject to taxation, and the other is not.

Now, some question was made a few moments ago—I think the chairman of the committee suggested it—as to the right of Congress to compel these corporations to furnish food. Now, that is a matter for State regulation and not a matter for Federal regulation. Various States have passed laws requiring the railroads running within their borders to furnish ice water, heat, and other things conducive to the comfort of the passenger. I apprehend that it will not be contended that the Federal Congress has any authority like that which the States exercise. The States exercise it because these companies are chartered by the States, and they do it in the exercise of their police power.

Mr. MANN. You think that Congress could not legislate as to the question of heating the cars engaged in interstate commerce?

Mr. FELDER. I do not think so, especially freight cars. How would you regulate it?

Mr. MANN. There is not the slightest doubt about it. We have made a provision in reference to the use of air brakes, purely as a matter of safety.

Mr. WANGER. And as to the automatic couplers, also.

Mr. MANN. Yes, and everything like that. There is not the slightest doubt about our authority to regulate that.

Mr. FELDER. I have been practicing law about twenty years, quite actively engaged, and with all due deference to the views of the committeeman I have yet to find any question about which there is “not the slightest doubt.” I think all questions involving legal matters are hedged about by doubts.

Mr. MANN. There are many legal questions about which there is not the slightest doubt, Mr. Felder.

Mr. FELDER. There is another question, raised, I think, by the chairman of the subcommittee, to which I want to refer. The largest common carrier hauling peaches in the State of Georgia is the Central

Railroad. The Central Railroad, so far as carrying peaches is concerned, originates and ends in the State of Georgia. Both of the termini of this road are in the State.

The road, I am informed, transports more peaches than all the balance, or almost as much as all the balance, of the roads in this country put together. The Central Railroad of Georgia is chartered by the State of Georgia. It has no Federal franchise. And, therefore, as to this business—this private-car business—Congress, I submit, has no power to require the Central Railroad of Georgia, or any other line that operates wholly within a State, to furnish this sort of equipment. Now, what right would the Commission have to fix a rate? Absolutely none. And Congress has no power to confer the right to fix a railroad rate for the transportation of peaches within the State of Georgia.

Mr. MANN. Was not that question settled by the Supreme Court of the United States, as to the Central Railroad of Georgia in the Social Circle case, where the same thing was set up?

Mr. FELDER. No, sir. The Social Circle case was the Georgia Railroad.

Mr. MANN. The Social Circle was a very far-reaching case.

Mr. FELDER. Was that the Jim Crow car case?

Mr. MANN. No, sir; that case involves the rate from Cincinnati and Chicago to Social Circle, where the railroads set up that they only charged the local rate from the points in their State, where they took their freight, to Social Circle; and the question was involved of the rate to Atlanta, and the Supreme Court held that that was of no avail.

Mr. FELDER. But here is the point I am making. I did not finish what I was saying. The rate operates entirely within the State, and therefore if a rate was made by the Interstate Commerce Commission, if a rate was made in this matter, then they would have the right to charge the full local rate, and therefore if the full local rate was charged by that road, plus the rate, whatever it might be, fixed by the Interstate Commerce Commission, the rate for that business would be so high as to handicap the shippers of fruit and vegetables. That is the point I am making on that.

Mr. MANN. You mean they would go out of the business of handling fruit?

Mr. FELDER. I mean this, that if they charged a local rate from one end of their road to the other, and then there was added to that the rate fixed by the Interstate Commerce Commission. As it is, we get the benefit of differentials.

Mr. MANN. The Supreme Court held that you could not charge a local rate on a shipment intended to go outside of the boundaries of the State, no matter whether your railroad was wholly within the State or not.

Mr. FELDER. That decision has escaped me.

Mr. MANN. That is one of the most prominent decisions there is on railroad rates—the Social Circle case.

Mr. FELDER. No, sir. The railroads could decline to accept a carload of peaches beyond the end of its line, and no contrary doctrine has ever held in any court.

Mr. STEVENS. No; it can not. It can not decline to take a carload of peaches to the end of its line.

Mr. FELDER. They can not decline to take them to the end of the line, but they can decline to take them beyond the end of the line.

Mr. MANN. If they wish to take the freight to the end of the line and unload it out of the cars, that is their privilege, but they can not take it to the end of the line and transfer that carload of peaches to another line for transportation further and escape the conclusion that that is interstate commerce.

Mr. FELDER. I admit that.

Mr. MANN. Now, your proposition is that they can not transfer it to the end of the line and take it out of the car, and that this would put them out of the business?

Mr. FELDER. My point is that if you require the railroad to furnish its own equipment for the transportation of peaches, no small railroad can afford to own the equipment.

Mr. MANN. That is a question of policy.

Mr. STEVENS. Where is your home, Mr. Felder?

Mr. FELDER. Atlanta, Ga.

Mr. STEVENS. Is there, or was there, a newspaper published there last August entitled "The Atlanta News?"

Mr. FELDER. There was; yes, sir.

Mr. STEVENS. What kind of a paper is it, a reputable paper?

Mr. FELDER. The Atlanta News? Yes, sir; it is a small evening paper published in our State.

Mr. STEVENS. A daily paper?

Mr. FELDER. Yes, sir.

Mr. STEVENS. In the Atlanta News of the 6th day of August, 1904—that was the middle of the last peach season, was it not, right in the middle of the peach season?

Mr. FELDER. I would say it was. Of course, there are peaches which ripen a little later in north Georgia than in south Georgia.

Mr. STEVENS. A statement appeared in the Atlanta News on the 6th day of August, 1904, which I will read, as follows:

The statement of the Armour outfit that the railroads are glad to make exclusive contracts because it has the equipment is not borne out by facts. In The News of August 6, 1904, the Atlanta, Ga., correspondent wrote:

"The failure of the refrigerator people to furnish the shippers of north Georgia with a sufficient number of refrigerator cars for use in shipping their peaches has seriously affected the growers during the past week. Although the shippers and transportation lines have been clamoring for more cars, the refrigerator people have appeared indifferent or careless in furnishing them. On account of the scarcity of cars the shippers have suffered heavy losses. In a few instances, upon the request of shippers who were unable to secure refrigerator cars when wanted, the transportation lines pressed into service nonrefrigerator cars in order to move the surplus fruit already on the platforms at the stations.

"COULD NOT GET CARS.

"Being unable to secure the required number of cars for the transportation of fruit already gathered and ready for shipment, a large number of growers at Marietta, Ga., a station on the W. & A. R. R. and Atlanta, Knoxville & Northern Railway, held a meeting and served notice upon the transportation lines that unless they were furnished with refrigerator cars at once they would undertake to hold the roads responsible for any damage sustained. Similar action was taken by the growers and shippers at Adairsville, Ga., a local point on the W. & A. Railroad, and one of the largest peach shipping points along that line.

"Very few shippers here are aware of the fact that the special lines of railroad, or those leaving the Georgia points, are, in some respects, to blame for the shortage in refrigerator cars. Armour has binding contracts signed with those roads which prevent any other refrigerator line from furnishing cars. There would have been no shortage in refrigerator cars if other than the Armour cars were allowed in the State. The Continental Fruit Transportation Co. was prepared to furnish several hundred

cars to the Georgia shippers if the railroads would have allowed it to go into the peach territory. Several New York and Boston commission men had assurances from the C. F. T. people that they had the cars and were ready to put them down there, but were shut out by the Armour contract."

That is the statement. What have you to say about that statement?

Mr. FELDER. Without being informed about the facts, I want to say this, that The News is an eminently reliable and respectable sheet, published in my State. But statements often find their way into the columns of that paper, as they do, I believe, into papers throughout the country, which are very inaccurate. Mr. Fleming, the agent of the Armour people, is in the room, and can answer about this of his own knowledge. I can only answer on information.

STATEMENT OF MR. I. M. FLEMING.

Mr. FLEMING. I was in Atlanta at the time, Mr. Stevens. I was there in charge of the work. I would like to ask how much of that article that you have read was quotation and how much original?

Mr. STEVENS. All that I read was quotation, and I read all the quotation.

Mr. FLEMING. As to the C. F. T. part of it, and what they were willing to do?

Mr. STEVENS. I read all the quotation, from there down to there [indicating on article].

Mr. FLEMING. I was thinking that probably the latter part—the part as to the C. F. T.—might have been a little misleading.

Mr. STEVENS. No, sir; I read the whole quotation.

Mr. FLEMING. The actual fact is that just about the first ten days in August, when the heaviest part of the crop in north Georgia was moving out, was the time in which that excessive movement, far above the estimate, of which Mr. Robbins spoke the other day, occurred, which amounted to about 1,000 cars. They had estimated that there would be about 4,000 cars of peaches to move out of the State of Georgia, and in reality there turned out to be something over 5,000 carloads, and the principal increase was in this district they referred to there, just north of Atlanta, between Atlanta and Chattanooga, on the W. & A. road and on the Southern Railroad.

Mr. STEVENS. You have exclusive contracts with both those lines?

Mr. FLEMING. Yes, sir; with both of those lines. The railroads have always recognized there that we had a right to a notice of twenty-four hours to fill an order for a refrigerator car for loading, to be furnished at the station within twenty-four hours of the time the order was placed. During about three days of the heaviest movement we were practically half a day—well, say from twelve to twenty hours—behind in filling the orders; but we were within the twenty-four-hour limit. I was located at Atlanta, and was, I will say, in actual charge of the work. In that movement during those ten days, the heaviest part of the movement, we moved between 2,200 and 2,300 cars. And that was, I should say, a movement 50 per cent higher and heavier than that which was anticipated or of which any notice was ever given by the railroads or the shippers. It exceeded the estimates by 50 per cent; yet we did fill those orders, as I say, within the twenty-four-hour limit, possibly with one or two exceptions at isolated points.

And you heard the statement of Judge Gober, who is one of the biggest shippers, if not the largest one, at Marietta.

Mr. FELDER. He is the biggest shipper in north Georgia.

Mr. FLEMING. Yes; he is the biggest shipper north of Atlanta, and I think his statement ought to carry some weight as to the actual conditions.

Mr. MANN. Did you refuse to permit the use of other refrigerator cars and thereby prevent the furnishing of sufficient cars for this movement?

Mr. FLEMING. No, sir; the question never came up.

Mr. STEVENS. It is stated in this article that there were two meetings of growers held, one at Marietta and another at Adairsville, and that the shippers at those meetings stated that they had not sufficient equipment furnished by your company, and they demanded sufficient equipment from other companies, but could not obtain it on account of your exclusive contracts.

Mr. FLEMING. Well, that would work out as an actual fact; yes, sir. That would be the fact if they had asked for those cars. I do not know that they did take such action.

Mr. STEVENS. All I know is what is stated in that article from the Atlanta News.

Mr. FLEMING. I think that the article there referred to is grossly exaggerated.

Mr. MANN. Under your exclusive contracts with these railroads, do you mean to say that if you can not furnish the cars, the railroad is not permitted to get the cars from some other company?

Mr. FLEMING. Well, I think the Central of Georgia contract that was read yesterday bears right on that point, that in case we could not get the necessary number of cars there in time, or it became apparent that we would not be able to fill orders, that contract provides that they could go out and get other cars and we would be compelled to ice them, and give them the same attention as though they were our own cars.

Mr. MANN. So that, as a matter of fact, under your contract with that railroad company, if you did not, last August, furnish your own cars in sufficient quantities to handle the freight, within the twenty-four hour limit, the railroad company had the right——

Mr. FLEMING. They had the right.

Mr. MANN (continuing). To get other refrigerator cars and compel you to ice them?

Mr. FLEMING. We would have had to ice them and give them the benefit of the same facilities for icing and reicing that we have for our own cars. That case has happened once before.

About three years ago in North Carolina there was a temporary scarcity of cars there one day. There had been some interruption to the southbound empty movement, and I think there were about 10 C. F. T. cars, the cars of the same line referred to in this article you have just read, delivered to us by the railroad, and those cars were handled and iced on the same terms as our own cars.

Mr. FELDER. I will add to that statement that Mr. Dean, a lawyer from Rome, Ga., made a statement in behalf of the Esch-Townsend bill, and in advocacy of it before the Senate Committee. Before he made the statement I asked him whom he represented, and he said the Association of Peach Growers in North Georgia.

I asked him if there was any dissatisfaction about the car service, and he said that it was very slight in comparison with the rates that the railroads charged, and he informed me, furthermore, that he thought the excuse of the car lines for not rendering the most efficient and satisfactory service during the last season was very good, that the peach crop ripened very rapidly, and that peaches had been grown in very small quantities in North Georgia prior to last season; that the industry had about doubled, and it seemed that nobody was in a position to foretell the very large increase that had occurred.

Mr. FLEMING. Just in that connection I want to say that our contract provides that if we fail to fill these orders within the prescribed time, say the 24 hours, and damage is done to the shippers they have the right to call on us to refund in damages equivalent to the lack of facilities. We have not received any claims from the North Georgia shippers, and that crop was moved last August, and it is now the middle of February.

Mr. STEVENS. You have not received any claims from them?

Mr. FLEMING. I do not think we have received one; not a single one. Some may come in. I believe the statute of limitations is four years. Some of those claims may come later. But we have not had a single excessive claim, and I am not positive if any claims at all have been presented.

Mr. ECH. Have you had any claims from any other sections on account of a shortage of cars?

Mr. FLEMING. Yes, sir. The first year of the operation of this exclusive contract with the Central Railroad of Georgia—this was in 1898—practically the same condition existed, except that it was in the southern part of the State, that existed in the northern part of the State last year—that is, the shippers were unaccustomed to growing the fruit on a large scale, and did not know how to estimate their crops; and where we moved that year, I think, about 2,000 or 2,100 cars, it had only been estimated that there would be about 1,200 or 1,300 cars. Now, at the last minute, when the rush of the crop came on, before we realized it we were out of cars and out of ice, and I know that for ten successive days we shipped 35 carloads of ice a day from Cedar Lake, Ind., to Macon, Ga., and if any accident had happened to one of those special train loads of ice, we would have been “up a tree,” as the saying is, the next day, to ice the cars that were coming back empty for loading. That kept up for ten days.

Armour & Co. shipped 7,000 tons of ice, because they were obliged to ship it, because they were under contract to furnish the cars and the ice. And we had claims when the season was over, which was by the end of July—after the season was over, during the months of August and September, we had claims presented to the amount of about \$17,000 for failure to furnish cars within the twenty-four hour limit. Some of the peaches were not even shipped, although they were tendered to the railroad, and before the railroad recognized the fact that it was up to them to furnish a car within twenty-four hours, and where they were not furnished some of the peaches were just allowed to rot on the platforms.

Now, we settled all those claims except one, and one of the attorneys of the company from Chicago met me at Atlanta in the early part of October, as soon as our season was over in Maryland, where I was working, and we spent six weeks there and settled all the claims except

the one referred to here by Mr. Urion, the claim of Doctor Ross, which was in the courts. We did not claim that we did not owe them money, or that we had not damaged them, because we knew that we had. The only question was how much we owed them. That case was fought in the court for four years, and they finally got a verdict which was within \$100 of what we offered them before. There was no contention on our part that we did not damage this fruit, and, as I say, we finally settled at satisfactory figures.

Mr. Willingham, who came here the other day and testified, had a claim of \$1,700, and it was settled for \$1,100 upon our showing him what was the actual loss, and he was open to argument, and was a just man, and he settled and we paid him cash. Now, that is the only charge. We have these claims come up all over the country. You can not always have your service perfect, some mishaps will occur, and it comes within my province to settle claims for improper service on that account. I have worked in the territory between Florida and Pennsylvania and New York.

STATEMENT OF MR. THOMAS B. FELDER, JR.—Continued.

Mr. FELDER. I want to put this question to the committee. I think it is vital to the fruit growers of my State. Suppose you should pass a bill requiring the railroads to furnish this equipment, and turn that whole matter over to the Interstate Commerce Commission. As I have said, so far as the Central Railroad is concerned, the peaches and the cantaloupes originate around Fort Valley. The line of that railroad ends in the city of Atlanta, going to the eastern markets, and suppose when that order was put into effect the Central Railroad should say to the fruit growers around Fort Valley, "If you have any peaches to transport, I will put them in my box cars and deliver them to Atlanta and turn them over to the connecting lines. I will simply make a contract with you to take these peaches to Atlanta. The Federal Congress has no jurisdiction over me; I am an intrastate carrier." Suppose that should be their attitude, and suppose they should refuse to build the ice houses and furnish this refrigeration. I respectfully submit that that would be a natural result, because the railroads would not be able to furnish the immense amount of equipment necessary to carry a crop gathered and marketed within the space of four, five, or six weeks—it would take that period to gather it. Now, would not that result, I submit, in the annihilation of an industry which is growing and developing as almost no other industry is growing and developing in this country? Therefore I say that I am not surprised that a great number of peach growers of my section, and a great many berry growers and melon growers have come here voluntarily and gone before this committee, and have asked permission to present their views about this matter, and have petitioned Congress to stay its hand and not be the instrumental means of destroying and annihilating this industry.

Mr. STEVENS. According to Mr. Urion we have not any hand.

Mr. FELDER. Assuming, now, that you can deal with this. I do not grant that, but assuming that the act of building ice plants along at intervals of 90 to 100 miles where the trains are stopped and the cars are "kicked out" and re-iced and then coupled up and moved along to their destinations, is interstate commerce, although I do not

think that is in any sense an act of interstate commerce or subject to regulation by the Federal Congress; but granting for the sake of argument that it is so subject, and supposing that you pass this act and put it upon the statute books, do you not simply destroy the thing that you are endeavoring to foster and protect?

Now, since I came to Washington, and prior to my coming to Washington, I have gone through the testimony of everyone who has testified here, and also in the various hearings before the Interstate Commerce Commission, and as far as I can find, or as I have been able to discover, nobody complains about the service or the charges for refrigeration except a few middlemen whose business and calling has been rendered precarious, if it has not been taken away entirely by reason of the facilities afforded by this private car line.

Mr. MANN. Mr. Urion made that same statement. If you have not already done so, I wish you would explain to us how increasing the amount of this traffic and increasing the quantity of the peaches which are delivered to the middlemen ruins their business.

Mr. FELDER. I will make that so plain that he who runs may read. Now, I am a sort of a farmer myself. I raise melons and various other farm products. I have farms in Georgia and in Indiana.

Mr. MANN. I do not see what you want to practice law for.

Mr. FELDER. I practice law so as to keep my farms going. If my income as lawyer is cut off I would be compelled to quit farming.

Mr. STEVENS. You are not a success as a farmer, then?

Mr. FELDER. I am a William Jennings Bryan kind of farmer, an agriculturist; I spend what I make practicing law on my farm. I am not a William Jennings Bryan man in any other sense.

In the olden times, before the advent of the private car lines, under the old method, the farmer would ship a carload of watermelons or a carload of cantaloupes to one of the near-by markets, Savannah, Chattanooga, or Atlanta, and then he would sit down and wait, going to the post-office day after day to get his remittance; finally, after several weeks of anxious waiting, he would get a letter about to this effect: DEAR SIR: Your watermelons came to this market—or your cantaloupes, or berries, or peaches, as the case might be—in a very defective condition. Indeed, could find no sale for them. I advanced freight charges, and I therefore hope that you will send me by return mail \$50 or \$75, or \$100—whatever the amount might be—to cover the freight charges.

Now, that farmer had no means of knowing whether that commission merchant had told the truth about the transaction or not. He had no means of keeping tab on the commission merchant.

Now, I do not say that commission merchants are more dishonest than other people, but the old system afforded a certain kind of temptation to the commission man to take all the corn for the toll and swear to the sack.

Now, under the old method the watermelons were shipped under a contract whereby the railroad was relieved from liability for damage from natural causes. Under the new system the private-car lines must see that every load of these refrigerated products, peaches, and such things are delivered in good condition, and if they fail to do it, they have to pay the damages, and a carload of peaches is a very valuable thing when it is delivered in good shape in the market.

Under the present system that car arrives and the agents of the car line are there to inspect it and to report the condition in which that car was received at the point of destination. Not only that, but commission merchants would not incur the hazard of the traffic in this business on their own account under the old system. The shipments on consignment were on account. Under the new system, where transportation is made certain, and where the condition of the fruit when it reaches its destination is made certain, the commission merchants instead of handling it on account, go out among the peach, berry, and melon growers and buy directly from the farmers, because they can calculate with reasonable certainty that the things they purchase will be delivered within a certain time in the market, and that they will be delivered there in prime condition. That is the situation.

Mr. MANN. No, your whole argument is in favor of this thing being a benefit to the commission merchant.

Mr. FELDER. Not at all, sir.

Mr. MANN. It seems to me that way.

Mr. FELDER. Well, I have been very unfortunate, then, in making myself understood.

Mr. MANN. So far, the only reason that you have given in favor of the commission merchants not being in favor of the refrigerator lines is in favor of it.

Mr. FELDER. In answer to that I want to say that when a man handles a thing on your account, and on a commission, he is a commission merchant; but he ceases to be a commission merchant when he goes out among the farmers and buys their products straight out.

Mr. MANN. Whether he is a commission merchant or not, he continues to exist and do business. Now, why should he be in favor of handling rotten stuff on account rather than being permitted to do what he does now, namely, to go out and buy it on his own account?

Mr. FELDER. It ought to be perfectly obvious to the gentleman that it requires capital to do that, and the other sort of business requires very little or no capital. There are not many engaged in it, because the volume is larger and the profit is less.

Mr. STEVENS. None of those gentlemen who have appeared before this committee, or who testified before the Senate committee, are men of that class—those having no capital or responsibility.

Mr. FELDER. Well, I should imagine from reading the testimony of Mr. Ferguson that he is not a very large dealer.

Mr. STEVENS. No; but he buys on his own account. He goes into the field and purchases fruit, buys it and ships it whenever he can get it to advantage. He is entirely reliable and truthful.

Mr. FELDER. My recollection of it is that he stated that he handled 40 cars only last year.

Mr. STEVENS. I do not think that appeared before this committee.

Mr. FELDER. I read it, I suppose, in the testimony before the Senate committee.

Mr. STEVENS. However, conceding that he only purchased 40 cars, those were his cars of goods and he was entitled to fair treatment, charges, and facilities.

Mr. FELDER. I do not know Mr. Ferguson. I assume that he is a very nice man, and, no doubt, a very honest man; but of all the commission merchants in the United States who are aggrieved by the car

lines and their manner of doing business, I think only two of them came here to present their grievances.

Mr. STEVENS. I know, but they represented a very large number of reputable concerns.

Mr. FELDER. Well, I will not go into that.

Mr. MANN. These people who go down in Georgia and buy peaches and ship them to Boston—are not those peaches when they arrive in Boston handled by the commission men?

Mr. FELDER. Not altogether.

Mr. MANN. Generally, do they not reach the retail trade through the commission men?

Mr. FELDER. I never had the pleasure of meeting Mr. Hale until he testified before this committee. I paid very strict attention to his testimony, and my recollection is that he said that he was a citizen of Connecticut, and that he was engaged in the fruit industry of that State, and that he had a large acreage in Georgia, and he added—and my information on the subject had been to the same effect—that he was the largest individual peach grower in the world. He has the reputation in my State of having grown very rich in that industry, and he, in detailing the particular method pursued by him in transacting his business, said that he would ship peaches from Georgia to New York or the East, wherever he shipped them, and when the peaches got there he would be there to receive them, or his agents would be there to receive them and sell them.

He did not handle his peaches through commission merchants. He and Mr. Willingham and other gentlemen are interested, and vitally interested, in this industry, because they have their money invested in it. If these commission merchants lose by the modern methods of conducting this business, they can go into some other business; they have nothing to lose; but the men who came here and appealed to Congress to stay its hand, saying that they were perfectly satisfied with the methods pursued by the car companies, have their money invested in the business, and they all said that it was perfectly satisfactory to them.

Mr. MANN. As a matter of fact, are not most of these people who go out and buy this class of products, these commission men, engaged in the commission business, and handling the product which they buy in their own houses in the big cities?

Mr. FELDER. I do not know what a commission man is, except what he is defined to be under the law. When a man goes and buys a thing straight out, he becomes the owner; when he sells it for his own benefit he is the owner and is not a commission man.

Mr. MANN. If a man runs a commission house on Water Street, in Chicago, but goes down in southern Illinois and buys a carload of strawberries, does that take him out of the class of commission men?

Mr. FELDER. He is still a commission man.

Mr. MANN. We have taken him out of the class of commission men. Why is he opposed to that car-line business, then?

Mr. FELDER. Very few of them seem to be opposed to it. For instance, one very distinguished man, who has a place in Philadelphia, came here and stated that the thing was perfectly satisfactory.

Mr. MANN. You came here, and stated that no one was opposed to this except the middleman.

Mr. FELDER. If anyone else is opposed to it I have never heard of them.

Mr. MANN. And now you say that there are very few of those who are opposed to it?

Mr. FELDER. Yes, sir.

Mr. MANN. You think those very few men have created a great deal of furore?

Mr. FELDER. I used to be a legislator myself, and I was chairman of a very prominent committee of the House. We had a great many of these sort of things, and when a man hung his hat in our committee room, concerned himself about legislation on subjects in which we had no interest, we would call him a "walking delegate;" and I do not know any difference between the walking delegate who goes about the country and gets up labor compacts, and the walking delegate who goes about the country and gets chambers of commerce to indorse certain legislation. He is none the less a walking delegate, if he is engaged in promoting legislation, even though he is a millionaire.

Now, my recollection is that some gentlemen who do not reside in our State visited several towns therein and called meetings of the chambers of commerce and said, "If you will indorse these various propositions, you will get something for nothing."

Now, we have not attained to that ideal condition, in my State, where we are not willing to get something for nothing; we are like other people.

Mr. STEVENS. I suppose that you would class a man like President Truesdell, of the Lackawanna, or Mr. Cassett, of the Pennsylvania, as a walking delegate because he believes some legislation is necessary on private car matters.

Mr. FELDER. I would not so classify him, as I know nothing about him.

Mr. STEVENS. Have you not noticed that almost every official of a railroad in the United States who has given an expression on this subject says that there should be some legislation on this subject?

Mr. FELDER. No, sir; I have emphatically not.

In conclusion, I have to thank the committee for the attention they have accorded, and the many courtesies shown me during the delivery of my remarks. I regret that I have found it necessary to take up so much of the valuable time of the committee in the presentation of my views in behalf of the great interest I represent.

(Thereupon the committee adjourned.)

FORT VALLEY, GA.,
February 6, 1905.

HON. E. B. LEWIS, *Washington, D. C.*

DEAR SIR: I beg to call your attention to the fact that the fruit growers of this section of Georgia are greatly interested in the question of transportation of fruits, and are consequently much concerned as to pending measures before Congress that may affect this vital interest.

I do not understand the proposed legislation and have no argument to make in consequence, but I think it will be well to call your attention to one phase of the matter which we think should be kept steadily in mind in whatever action shall be taken in reference to private car lines which handle our business in refrigerator cars.

We do not think that the private car line can be safely driven out of business, as the fruit shipments call for a specialized service on a very large scale for a very short time during any one year. Fort Valley alone used 1,000 cars during the last season, covering a period of not more than five weeks. Marshallville used approximately as many, besides the cars used at other shipping points in this part of the State.

It seems to me that any situation which would force growers to depend alone upon the facilities the Central Railroad could provide, without being allowed to make contracts with private car companies, would greatly jeopardize our power to market our fruits.

Any legislation which would seem to have the effect of driving private car companies out of our territory alarms us. I know Congress will not want to do anything that will harmfully affect fruit growers, but the question is whether this would not have this effect. I know you will be willing to hear from your constituents upon this question and that your influence will be exerted to forward what you consider their interests.

For this reason I have taken the liberty of calling your attention to this matter in the respect mentioned. I need not call your attention to the magnitude of the interests involved. I have written to Senator Bacon on the same line and I will be satisfied that you will take this feature of the question into consideration.

Yours, very truly,

H. A. MATHEWS.

COLUMBUS, GA., *January 31, 1905.*

Hon. W. C. ADAMSON, *Washington, D. C.*

DEAR SIR: As a fruit grower of Chattahoochee County, I address you on the subject of the fruit car agitation now being considered by Congress.

It is the opinion of myself and all others with whom I have talked about the matter that the private fruit-car lines have made possible the development of the fruit industry of our State. The railroad companies could never be depended upon to give satisfactory service in handling the fruit crop, and I therefore ask, on behalf of myself and others interested, that you use your best endeavors to prevent any legislation that will tend to change the present system of handling fruit shipments by endeavoring to have the fruit cars owned and operated by the railroad companies.

Yours, truly,

H. L. WOODRUFF.

MACON, GA., *February 16, 1905.*

Hon. E. B. LEWIS,

House of Representatives, Washington, D. C.

DEAR SIR: Your favor of the 3d addressed to D. M. Hughes, president, has just been referred to me for answer from the fact that I am a member of the transportation committee of our association, which has had the matter of rates up, with a view of some relief, for the past five years, and therefore I am, perhaps, a little more conversant with the rate question.

I will state that our association has already indorsed the movement to give the Interstate Commerce Commission or some other body power to regulate the rate question and power to enforce their decisions. There will be another large meeting of our association at Macon on February 22, at which I feel sure a still stronger indorsement will be given.

I note you desire some information in regard to the "private car" system, and that you think something should be done on that line. Our committee have been doing considerable work as regards getting information and will state that we agree with you thoroughly. I understand Mr. Willingham, of Macon, and two or three other independent growers have been before your committee, but these gentlemen are mostly interested in other business and therefore were perhaps not thoroughly posted, although some of their statements were correct. I will answer your questions first and then give you the views of our committee on the "private car" question.

In answer to your first question, will state that there are no initial or terminal charges except the usual ones which obtain in other lines of business. The Fruit Growers' Express, which is the Armour line, and which now control all the private refrigerator lines, make a contract with the different railroads in this State by which these railroads agree to allow no other refrigerators to handle the business, or in other words, an "exclusive contract." The railroads all over the United States pay the Fruit Growers' Express three-fourths of a cent per mile for every mile these cars are hauled, whether empty or loaded. All kinds of produce are loaded in these refrigerators, and this is all the profit the Fruit Growers' Express get out of the business except such kinds of produce or fruit which have to be refrigerated.

The charge for this refrigeration has varied in years past according to the competition in the different sections, going as low as \$50 per car from California points to New York, and something like \$20 to \$30 per car from Michigan points to New York on peaches. Since Armour has acquired the control of the competing private lines

the rate of refrigeration from California points to New York, I understand, is \$80 per car, and a somewhat similar rate from Michigan, or perhaps around \$50 per car from Michigan. The distance, I believe, from California is between 3,000 and 4,000 miles. The Fruit Growers' Express charge a rate of 12 cents per package, with a minimum of 550 crates, or \$68.75 per car, from Georgia points to New York, for a distance of approximately 950 miles.

This amount is of course in excess of the freight rate, and I am informed that the railroads do not participate in any portion of this amount; so, as far as the Georgia business is concerned, the Fruit Growers' Express get three-fourths cent per mile for bringing their cars in here empty, and also get three-fourths cent per mile and \$68.75 on the haul loaded from here to New York. These cars make the round trip about every eight days. It is necessary that the Fruit Growers' Express keep a force in the territory to see that the cars are kept moving and see that they are properly iced. The cars require icing at initial point of 6 or 7 tons, and after loaded they are reiced, as the warm fruit generally causes part of the initial ice to melt. The cars are then reiced again at Atlanta, Rockymount, N. C., and Alexandria when necessary; and of course after the car is thoroughly chilled it is not necessary for a full icing at the points mentioned, and I should say from 1 to 3 tons at such points would be ample.

I will state further that we have no means of knowing that this icing really takes place except at initial points, and shippers or consignees are not permitted to examine the bunkers or the cars at destination when going to New York as the Pennsylvania Railway unloads the cars and puts the peaches "on dock" at New York. Examination, however, is permitted at destination at every other point in the United States, except at New York, although it is impossible for a shipper to know the amount of ice put in these cars at re-icing stations except by statement from the Fruit Growers' Express. I am informed that these refrigerator cars cost between \$1,500 and \$1,800 apiece and that they give a net revenue of about \$600 per car per annum, thus paying for themselves every three years. The average life of the cars is from twelve to fifteen years.

Our committee is of the opinion that the service from this State is comparatively satisfactory, or more satisfactory than in years past, when there were several car lines operating on one line of railway, although we have not had this competition for over five years, and it is natural that the service would have been improved no matter how many lines might have operated. We believe, however, that an "exclusive contract" should not be permitted; also that the present minimum weight should be reduced, as the present cars are not capable of properly refrigerating the minimum weight which they demand. It is generally known that the United Fruit Company, which control the banana business, is also owned by Armour, tending to prevent competition in that line, and which will, no doubt, extend to other articles when the opportunity presents itself. These questions, of course, would have to be shown before some such tribunal as the Interstate Commerce Commission, and therefore we strongly urge that the private-car lines be brought under the same act as the one regulating the railroads, and we can not possibly see why this should not be the case.

The railroad question is far more serious with the peach shippers and, in fact, with shippers of all kinds of produce from this section of the country, and I will state that we pay a higher rate than any other section of the United States. The present rate on peaches, in excess of refrigerator charges, is 86 cents from, say, Fort Valley to New York; Philadelphia, 86 cents; Boston, \$1.12; Baltimore, 83 cents. The approximate distance to New York is 950 miles. The distance from Fort Valley to Chicago is approximately 900 miles, and the rate is 63 cents; Pittsburg, 64 cents; Buffalo, 65 cents, and Cincinnati, 45 cents. You will note that the so-called western points take a less rate than the so-called eastern points, and this we believe is caused on account of the "close affinity" of the lines operating between this section and the East, while we have apparently had considerable competition to western points. We understand that Charlottesville, Va., and Cincinnati, Ohio, are commonly called basing points for the eastern and western shipments, and the distance to each is about the same from Fort Valley.

The proportion of the rate up to Cincinnati is 45 cents, and up to Charlottesville is 69 cents. We can see no reason for this especially as the larger portion of the business goes East on account of the larger markets there, and therefore the cost of handling per car should be less. We have called the attention of the railroads to this discrepancy time after time but without a satisfactory answer. This is a part of the local situation. Now as regards rates from other sections will state that the car-load rate on apples from interior New York State to Macon is 40 cents per 100. Apples have to be hauled in refrigerator cars but without icing. No charge is made for the refrigerator. Potatoes 40 cents from New York State to Macon. Lemons 40 cents. Potatoes from Georgia to New York, I understand, is 90 cents per 100.

The rates on peaches from Texas points to New York with a distance one-third greater is approximately the same, and to Boston a shade cheaper. The rate on peaches from California to Boston, I understand, is \$1.25 per 100 for a distance of 3,000 to 4,000 miles against our rate, which figures approximately \$1.12 for a distance to Boston of about 1,000 miles. You can readily see that while we are more favored as regards location all of this is virtually lost by the present rates. We have made applications for the past five years for some relief to the railroads without any success whatever, and we sincerely hope some bill can be passed where such matters can be presented and a fair decision given and such decision enforced.

The prices being obtained for peaches is going to be lessened each year on account of the large acreage, and has already dropped now from about \$5 per crate several years ago to \$1 to \$1.50 at destination. The next crop will probably show over 5,000 cars and I do not believe the growers will get cost of production without some relief, which will mean the ruination or the hurt of the industry as far as Georgia is concerned. I trust you will pardon my long letter, but you asked for full information and I hardly could condense it into shorter form. I have not seen a copy of the Townsend-Esch bill, but I would like very much to see one and would appreciate any views you might wish to express to our association at the meeting on February 22, as to the defects in present bill. If you consider the information contained herein worth submitting to Senators Bacon and Clay, you are at liberty to do so, and I sincerely hope that all of our Representatives from Georgia in both Houses can see their way to giving any bill which will give relief their hearty support.

I am sending Hon. Charles Bartlett, Congressman from this district, a copy of this letter, as I feel sure he will cooperate with you on this line.

With assurances of my highest respect, I remain,

Yours, very truly,

F. W. HAZLEHURST,

Secretary and Treasurer Georgia Peach Growers' Association.

The average number of Street's Western Stable Car Line cars, Hicks' stock cars, and Canda Cattle Company cars upon the railroads engaged in interstate traffic from Western States points to Eastern and Atlantic States points, covering all cars engaged in said long haul traffic, the total gross earnings of these cars as reported by the railroads operating the same, and the average earnings per car per month is as follows, viz:

Month of—	Total gross earnings.	Average number of cars.	Average earnings per car.
1902.			
March	\$10,488.17	1,301	\$8.06
April	6,464.58	997	6.50
May	7,265.04	784	9.27
June	7,975.69	773	10.32
July	6,939.14	764	9.08
August	7,674.65	751	10.32
September	7,365.05	853	8.64
October	10,263.10	883	11.62
November	10,859.31	1,187	9.14
December	14,547.13	1,492	9.75
1903.			
January	17,920.39	1,901	9.42
February	19,861.07	2,255	8.80
March	19,960.62	2,132	9.36
April	13,484.27	1,647	8.19
May	10,582.02	1,352	8.00
June	11,096.33	1,187	9.35
July	8,800.08	1,264	6.97
August	10,880.68	1,247	8.73
September	10,218.06	1,325	7.71
October	12,379.07	1,314	9.42
November	13,010.33	1,347	9.68
December	18,930.35	1,539	9.09
1904.			
January	20,737.49	2,042	10.16
February	22,647.62	2,628	8.62
March	24,630.04	2,586	9.52
April	20,478.04	2,101	9.75
May	15,962.75	1,751	9.11
June	11,809.04	1,485	7.95
July	11,771.34	1,265	9.31

STATE OF ILLINOIS, *County of Cook, ss:*

Joseph J. Schneider, being first duly sworn, on his oath deposes and says that he is the accountant in charge of the car records of Street's Western Stable Car Line and has served in that capacity for more than two years continuously last past; that he has compiled the above statement and that the same is true and correct in every particular.

JOSEPH J. SCHNEIDER

Subscribed and sworn to before me by said Joseph J. Schneider this 18th day of January, A. D. 1905.

[SEAL.]

KATE L. BLADE, *Notary.*

In the matter of charges for the transportation and refrigeration of fruits shipped from points on the Pere Marquette and Michigan Central railroads.

To the Commissioners of the Interstate Commerce Commission.

GENTLEMEN: The New York Commercial of November 16 contained the following item of news which we assume to be correct:

CHICAGO, November 15.

An appeal was made to the Interstate Commerce Commission to-day to compel the railroads and Armour Car Lines to reduce the charges for refrigeration exacted against shipments of Michigan fruits. The commission men and fruit shippers were represented by Attorney George W. Plummer, who declared that nothing had been done toward relief, although in its recent decision in the matter the Commission declared the charges to be unjust and excessive, and gave the defendants time in which to correct the evil. Commissioner Prouty stated that the Commission was considering the question and would gladly receive the attorney's ideas as to what relief that body could offer.

These complainants (ourselves) have always maintained that the gravamen of the evil developed by the hearing was the exclusive contracts of the railroads with the Armour Car Lines, that such contracts were and are an aiding and abetting on the part of the carriers in the violation of sections 1, 2, 3, and 10 of the interstate-commerce act, and this main evil will exist so long as the contracts are in force regardless of whether the refrigeration charges shall be reasonable or not.

We claim that the car lines is not a common carrier and, therefore, not subject to the act to regulate commerce and that the evidence discloses that they are violators of other statutes of the United States and subject to prosecution therefor. If these contracts merely provided for leasing cars from the car line we could make no quarrel with them under the present state of law.

Under the head of "Conclusions" in the report and opinion of the Commission in the above-entitled matter, after enumerating certain duties of the railroads arising out of their common-law liability, the opinion proceeds:

"The defendant railways may provide such cars, either by purchase on their own account or by lease from other roads, and, if the latter plan is adopted, they may undoubtedly enter into exclusive contracts like that before us. This has been settled by the Supreme Court of the United States."

If these contracts only provided for leasing cars, the authorities cited would warrant conclusions, but, as was said before, these contracts go a great deal further than leasing cars. The cases cited in this connection were between the carriers and private corporations, and not between carriers and the public, and had to do with a special business. It is said in the Pullman Palace Car case: "The business is always done under special written contracts," while the Commission has already found in the pending matter that all the services covered by these exclusive contracts had been previously rendered by the carriers, as is done in other kinds of ordinary freight, and the hub of the decision in the Central Stock Yards Company v. Louisville and Nashville Railway Company (192 U. S., 568) was to the effect that "there is no act of Congress that attempts to give courts the power to require contracts to be made in a case like this," and that the railroad had a right to provide a station for the delivery of stock and to deliver thereat. We submit that the cases cited do not cover the principle or the practice involved in these exclusive contracts.

The Commission say in another place: "It is possible that an order to cease and desist from those exclusive contracts, so long as the rates for refrigeration are exorbitant, might be enforceable." Inasmuch as the Commission has no power to fix rates, we submit that the qualifying phrase, "so long as the rates for refrigeration are exorbitant," should be eliminated from consideration and if it is possible, and if

the Commission are agreed that it is within their province to issue an order to the railroad companies to cease and desist from these exclusive contracts, such order would certainly be made because therein lies the only possible remedy under the present state of the law.

We submit this further consideration that the first question on the facts developed in this case is whether the Commission has any jurisdiction in the premises; and if they find that they have none, the matter ought to end, so far as the Commission is concerned, in finding the facts developed at the hearing. If, on the other hand, the Commission finds that it has jurisdiction to make an order to cancel these contracts and that such order might be enforceable, we submit that it ought to be done, the consideration which impelled the Commission to refrain from making such an order, namely, the immediate opening of a fruit-shipping season, no longer existing, and, in the event that such order is not complied with, that the Commission should then take steps to enforce compliance. If, on the other hand, the Commission finds that it has no jurisdiction to make an order on the facts developed in this hearing, then we respectfully protest against suggestions that the car-lines company and the railroad companies fix it among themselves.

This inquiry first brought to light these refrigeration contracts. The Commission had corresponded with these respondent roads as late as November 14, 1903, in respect to these refrigeration practices, and as late as November 25, 1903, Mr. B. B. Mitchell, traffic manager of the Michigan Central road, wrote the Commission in respect to the refrigeration charges of \$45 on a car of fruit as follows:

"I find that the car rental of \$45 per car (which I understand included refrigeration as well) on the two cars named was charged, as stated; not by this company, however, but by the Armour Refrigerator Car Line, who arranged with the shipper for the use of the cars."

When this letter was written the exclusive contract with the Michigan Central was in force, and Mr. Mitchell must have known it. These exclusive contracts existing on the Michigan roads are no doubt duplicates of all other Armour refrigeration contracts wherever in force in the United States. These practices have been covert, because the railroads knew them to be illegal, whether under the jurisdiction of the Interstate Commerce Commission or not, and this part of the Commission's conclusion, to wit: "This matter can be much better dealt with by the car-lines company and the railway companies than by the Commission, and it has been thought best, this being a general investigation, to leave the matter open during the present shipping season. If by the 1st of next October these refrigeration charges have not been readjusted, the Commission will take further action in the matter, either in this proceeding or by some new proceeding," it seems to us is a recognition of these exclusive refrigeration contracts, and that such recognition of their legitimacy is not warranted by the common law nor by the interstate-commerce act, whether the Commission may have jurisdiction in the premises or not.

Respectfully submitted.

KNUDSEN-FERGUSON FRUIT COMPANY.

Before Interstate Commerce Commission. In the matter of charges for the transportation and refrigeration of fruits shipped from points on the Pere Marquette and Michigan Central railroads.

Brief on behalf of Knudsen-Ferguson Fruit Company.

The subject in hand is to be considered in the light of certain well-known and established legal principles to which attention is first invited.

There seems to be no controversy over the facts, excepting only in respect to the reasonableness of certain refrigeration charges, and the relatively unimportant weight of the reasonableness of the charge is so marked and so conspicuous that there is danger of clouding the main issue by considering this question at all, i. e., referring to the refrigeration charges as they are now levied and collected on these roads. Our contention on this point, however, is that no charge in this connection is collectible, over and above the freight rate for fruit, set out in the schedules filed with the Commission.

The Pere Marquette and Michigan Central railroads are and have been common carriers during all the time covered by this investigation, engaged in carrying fruits from the Michigan fruit belt to the centers of population in the various States.

A COMMON CARRIER MUST CARRY FOR ALL.

The primary duty of a common carrier is to carry for all. There needs no citation of authorities to this point. Such is the doctrine of the common law, and that doctrine is operative upon all interstate commercial transactions, except so far it may be modified by Congressional enactment. (*Western Union Telegraph Company v. Call Publishing Company*, 181 U. S., 92.)

Referring to a quotation from the opinion of Mr. Justice Matthews, in *Smith v. Alabama* (124 U. S., 465-478), as alleged authority for the contention that there is no common law of the United States, and for the purpose of showing that Justice Matthews did not so hold, Justice Brewer, in the case just cited, says:

"But it is an entirely different thing to hold that there is no common law in force generally throughout the United States, and that the countless multitude of interstate commercial transactions are subject to no rules and burdened by no restrictions other than those expressed in the statutes of Congress."

And, further—

"Can it be that the great multitude of interstate commercial transactions are freed from the burdens created by common law, as so defined, and are subject to no rule except that to be found in the statutes of Congress? We are clearly of the opinion that this can not be so, and that the principles of the common law are operative upon all interstate commercial transactions except so far as they are modified by Congressional enactment."

And further in the case:

"But this question is not a new one in this court. In *Interstate Commerce Commission v. Baltimore and Ohio Railroad* (145 U. S., 263, 275), a case which involved interstate commerce, it was said by Mr. Justice Brown, speaking for the court:

"Prior to the enactment of the act of February 4, 1887, to regulate commerce, commonly known as the interstate-commerce act (24 Stat., 379, c. 104), railway traffic in this country was regulated by the principles of common law applicable to common carriers."

In *Murray v. Chicago & N. W. Ry. Co.* (62 Fed. Rep., p. 24, 25), referred to in foregoing opinion, it is held that:

"In determining the obligation assumed by a common carrier engaged in interstate commerce, the court has the right to apply the rules of the common law, unless the same have been changed by competent legislative action; in an action for damages for charging unreasonable rates for transportation from one State to another, shipments made before the adoption of the interstate-commerce act are covered by common law as modified by the act."

And further in the opinion it is said:

"If the theory now contended for by the defendant company be correct (i. e., that there was no common law applicable), then from the foundation of the Government up to April 4, 1887, when the interstate-commerce act took effect, it was open to all the common carriers engaged in foreign or interstate commerce to act as they please in regard to accepting or refusing freights, in regard to the price they might charge, in regard to the care they should exercise, and the speed with which they should transport and deliver the property placed in their charge. What more disastrous restraint upon the true freedom of foreign and interstate commerce could be devised than the adoption of the doctrine that the inaction of Congress left the carriers engaged therein entirely free to accept and transport the property of one man or corporation and to refuse to accept the like property of another, or to transport the products of one locality and to refuse to transport those of another; to charge an onerous toll upon property of one and carry that of his neighbors for nothing?" and after asking and raising these questions the writer of the opinion, Justice Brewer, proceeds to answer them most forcefully to the effect that there is a common law of the United States which includes as one of its principles the obligation of a common carrier to carry, and to carry for all.

In *Tiff v. Southern Ry. Co.* (123 Fed. Rep., 789-791) it is said:

"It has been from time immemorial the basic obligation of a common carrier to receive and transport all goods offered, upon receiving reasonable compensation * * * having undertaken that duty, it was settled by the common law that the common carrier must carry for all to the extent of its capacity without unjust or unreasonable discrimination, either in charges or in the facilities for actual transportation."

And, further:

"If this was true at common law, how much stronger is the obligation upon those vast public corporations of modern times, which, in consideration of valuable franchises granted by the public, are engaged in the stupendous business of transporting

freight and passengers? So universal is the reliance of the public upon these instrumentalities of modern commerce that their operation is indispensable to the very existence of our modern social life."

These citations and quotations are made here for the purpose of showing primarily that the duty rests upon these Michigan railroads to carry the fruit from that territory.

IS THIS DUTY SET OUT IN THE INTERSTATE-COMMERCE ACT?

It is further submitted, that while an express and categorical declaration of this common-law duty may not be found in the provisions of the interstate-commerce act, yet it is true that every provision of the interstate-commerce act dovetails with this common-law duty and is entirely compatible with the assumption that such common-law duty is not in full force and operation side by side with the interstate-commerce act (the act itself is principally one of prohibitions), and it is expressly provided in said act, in section No. 22, that "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this act are in addition to such remedies," and as we have before quoted from *Western Union Telegraph Company v. Call Company*, "We or clearly of opinion that the principles of the common law are operative upon all interstate commercial transactions, except so far as they are modified by Congressional enactment."

We start, then, as a guide to the solution of the present question, with the rule, amply made out from the foregoing reasoning and authorities, that it was and is the duty of these Michigan railroads to carry to market the products and all the products offered for shipment at their regular receiving points, and they can not acquit themselves of responsibility by stating that they were unable to furnish all the instrumentalities of carriage.

The interstate-commerce act provides that—

"The term 'transportation' shall include all instrumentalities of shipment or carriage."

What are the instrumentalities of shipment and carriage and what do transportation and carriage involve?

Could language more fully, completely, and clearly evince the intention on the part of Congress to put upon the common carrier the burden of furnishing all necessary equipment for carriage?

And what does the carrying or transporting of a car of peaches from Michigan to Boston in the peach season import?

These words, "transportation," "carriage," "equipment," etc., in the interstate-commerce act are used in a commercial sense, a trade sense, and "transportation" is directly defined as including all instrumentalities of shipment or carriage, and to load a car of peaches into an ordinary box car and move it on wheels from Michigan to Boston is neither to carry that car of peaches or transport it in the sense used in this act. Nor does such car include such instrumentalities of carriage as are in general use on railroads. Everybody knows that a car of peaches moved from Michigan to Boston under the conditions described would on arrival be no longer a car of peaches, but only a car load of decayed vegetable matter.

Society advances—the luxuries of to-day are the necessities of to-morrow. Invention is awake, and constantly finding out things and applying them to the everyday affairs of life, to the general comfort of man. Not many years ago there was no railroad, but there were common carriers, with a common carriers' duty to carry for all, and when the railroad came upon the scene of action and engaged in the work of carrying, instantanly with its becoming a common carrier that common-law duty attached to it.

Some years ago there was no refrigerator car, and the resident of Boston could not have the luscious peach of Michigan on his home table to delight his palate, but during the period now under consideration the refrigerator car was in everyday use all over the country; these respondent roads used them, owned a certain number of them and used them, and when and as soon as these refrigerator cars came into general use, instantanly it became the duty of these respondent roads to furnish them to its patrons in which to carry these perishable products.

There is only one place to raise a question in this controversy, and the only question that can be raised is whether the refrigerator car is and was, during the time of these practices, in common and general use, and to this question there can be but one answer; and having shown that these railroads are not furnishing or pretending to furnish these refrigerator cars, and are unwarrantably placing exclusively into other hands the furnishing of these cars by contract, complainants have shown themselves entitled to an order directing the respondent roads to cancel these car contracts and to furnish their own equipment.

The respondent roads, by their observance thereof in the past, have recognized their whole duty in the premises. Prior to 1902 they furnished refrigerator cars for this traffic, erected icing stations at convenient points along their roads, equipped themselves for icing these cars, and did so ice them, and collected no charge therefor other than by a higher classification and a higher freight rate. We contend for no more than the return to this practice, but we also contend for no less than that. Refrigerating cars for peaches were in vogue with them when the freight rates were made.

By the beginning of the season of 1902 some cunning evil spirit, with a long head and a minimum of conscience, started the practice of charging extra for icing the cars outside of and beyond the scheduled freight rate; this was but the first step in a preconceived plan in which the practices of 1902 and 1903 and the exclusive contracts of those years are the second, but not by any means the final step. The first step bears the mark of dishonesty on its face; these railroads had previously been conscious of what was the honest course and had pursued it; they knew that they had the means of averaging up and arriving at the transportation cost of refrigerated products and they did so by placing these products in a higher classification, according to well-known and recognized rules of procedure, and when, prior to 1902, they found, as they claim, that they were losing money on that traffic, the natural, accustomed, and honest course for them to have pursued was to advance their schedule rate on peaches, and no other course would have occurred to a mind occupied with the single thought of receiving for a service that which it was fairly worth.

The course the railroads did pursue, we submit, was dishonest and contrary to law, and discredits the truth of the statement that they were losing money on the traffic.

However, this departure was submitted to and greed, always impatient for more, hurried on to take the second step, the entering into these exclusive contracts, to defend which the railroads must prove as a fact, in addition to others not now being discussed, that the refrigerator car is not a carriage in common and general use among common carriers for transporting fruit long distances.

It is common knowledge that such cars are not only in common and general, but also in universal, use for this purpose, and the evidence in this case, including the evidence of the respondent roads themselves, abundantly shows this fact.

Having proved the fact, the law applicable thereto is: That the respondent common carriers must furnish the refrigerator car.

Let us leave the matter of refrigeration to be considered later.

"If the goods are of such a nature as to require for their protection some other style of vehicle than that required for ordinary goods, and vehicles adapted to the necessity are known and in use by carriers, it is the duty of the carrier to provide such vehicles for the carriage of the goods in question."

Hutch, carriers (2d ed.), sec. 295a, Mechem.

A bottom note by the editor (Mechem) to the foregoing text reads: "But see *Udell v. Railroad Co.*, 13 Mo. App., 254; *Wetzell v. Railroad Co.*, 12 Mo. App., 599."

The first case cited, *Udell v. Railroad Co.* (1883), as far as it goes, sustains the text. It was an action for damages for allowing a carload of cheese to freeze en route to destination, one of the contentions being that the cheese should have been carried in a refrigerator car. The plaintiff recovered, and the recovery was affirmed on appeal, and it was not shown that such cars were in common and general use for this traffic, and in the course of the opinion the court says:

"Briefly, a railway carrier is not, as matter of law, bound to furnish refrigerator cars; but there may be circumstances where it will be unreasonable not to do so; and it was fairly a question for the jury whether such circumstances existed in the present case."

This is not close and accurate language and is at variance with itself. Sure, if "there may be circumstances where it will be unreasonable not" to furnish a refrigerator car, and such circumstances do, in a particular case, so clearly exist as to leave no room for two opinions, then there would necessarily arise, as a matter of law, the duty to furnish a refrigerator car. There would be nothing left for a jury to do on such a showing, but the language of the court was obiter, the case before them was not of that description.

The opinion in the second case, *Wetzell v. Railroad Co.*, occupies only four lines, as follows:

"A common carrier who runs a refrigerator car is not, in the absence of an express contract to carry by the refrigerator car, liable for damages to an article carried by it, occasioned by heat during transit."

And the court which disposed of this question in hand in so summary a way, later, in the *Udell* case (the cheese case), refers to it again in the following connection:

"Secondly, it is urged that the defendant is not liable for the freezing of the cheese, unless the freezing was the result of its negligence; that it was not bound to

make extraordinary efforts to prevent it from freezing; and that the plaintiff, by shipping his goods without any special contract for unusual care, when they were or might be exposed to danger from freezing, assumed the risk himself. We do not at all question this proposition of law, when properly applied. *Sweetland v. Boston, etc., R. Co.*, 102 Mass., 282. We held the same in substance at the present term in regard to an injury to butter by heating, when it was shipped in hot weather."

These Missouri cases were decided in 1883, twenty-one years ago, when the refrigerator car was much less used than now, and the case referred to from Massachusetts was an action for damages caused by delay in transit.

These cases are mentioned and referred to, not in support of complainant's contention, but to show that they are not at variance with the cited text from *Hutchinson on Carriers*, nor with complainant's contention.

In *Beard & Sons v. Ill. Central Ry. Co.*, 79 Iowa, 518 (decided 1890), which was an action to recover damages for injury sustained in transporting a carload of butter, the defendant had transported the butter in an ordinary box car. It was not shown that plaintiff made any demand for a refrigerator car. The plaintiff recovered a verdict, based on defendant's negligence, and on appeal the court says:

"A carrier's duty is not limited to the transportation of goods delivered for carriage" * * * "the nature of the goods must be considered in determining the carrier's duty" * * * "live animals must have food and water when the distance of transportation demand it." Fruit and some other perishable articles must be carried with expedition and protection from frost. So the carrier must attend to the character of the goods he transports * * * and, if improved cars for the transportation of articles of commerce liable to injury from heat were in use, it was defendant's duty to use such cars in carrying butter."

And the court says further:

"These views are supported by the following, among other cases: (1) *Hewett v. Ry. Co.*, 63 Ia., 611; (2) *Sager v. Ry. Co.*, 31 Mo., 228; (3) *Hawkins v. Ry. Co.*, 18 Mich., 427; (4) *Ry. Co. v. Pratt*, 22 Wall., 123; (5) *Wing v. Ry. Co.*, 1 Hilt., 241; (6) *Merchants' Despatch & Trans. Co. v. Cornforth*, 3 Colo., 280.

As to the duty of defendant to use cars so constructed and so as to avoid injury from heat see:

Hutch. Carr., sec. 294; *Boscowitz v. Express Co.*, 93 Ill., 525; *Steinweg v. Rwy. Co.*, 43 N. Y., 123, 525. See also *Wolf v. Express Co.*, 43 Mo., 421 (wine case).

In *R. R. Co. v. Pratt*, 23 Wall., 123, which was an action for damages for loss of a carload of horses by fire, where it appeared that a worn and unfit stock car was used, the court, Huit, justice, says: "The judge * * * might * * * have charged that if the jury found the company to have been negligent and careless in furnishing cars, they would not be relieved from responsibility, although there had been an agreement that they should not be liable therefor."

The custom of shipping carload lots of peaches under refrigeration being shown, it was the duty of the carrier to furnish the refrigerator car and could not refuse to receive the peaches on the ground that it did not have the cars.

People, ex rel., v. C. & A. R. R. Co., 55 Ill., 95-112. Case raising point about receiving wheat in bulk.

These authorities abundantly verify and sustain the position that the respondent common carriers must furnish the refrigerator car.

The respondent common carriers must provide icing stations at convenient points, and ice the cars.

"The duty of the carrier extends also to the providing of proper and reasonable station facilities, such as platforms, warehouses, approaches, and the like. * * * For performing this service the carrier can not impose an extra charge, nor authorize nor require some other person or corporation to perform it and insist upon extra compensation." (*Hutch. Carr.* (2d Ed.), sec. 295d; *Covington Stock Yards v. Keith*, 139 U. S., 128 (1891); *McCulloch v. Rwy. Co.*, 34 Mo. App., 23).

In the *Keith* case the petition proceeded upon the ground of discrimination. The railroad was in the hands of a receiver and was operating under a written agreement not unlike the one at bar, between the railroad company and a stock yards company at Covington, Ky., by the terms of which the railroad company undertook to deliver all cattle coming to Covington through the yards of the Covington Stock Yards Company. The prayer of the petitioner was for a rule against the receiver to show cause why he should not deliver to him at some convenient and suitable place outside of the lots or yards of the said Covington Stock Yards Company, free from other than the customary freight charges for the transportation of all stock owned by or consigned to him and brought over said road to Covington. The stock yards company, under leave, intervened and filed a petition claiming all the rights granted by the agreement referred to, and alleging that it had expended \$60,000 in constructing depots, platforms, and chutes as required by that agreement.

In the course of the opinion by Mr. Justice Harlan, it is said:

"The railroad company, holding itself out as a carrier of live stock was under a legal obligation arising out of the nature of its employment to provide suitable and necessary means and facilities for receiving live stock offered to it for shipment over its road and connections, as well as for discharging such stock after it reaches the place to which it is consigned. The vital question in respect to such matters is whether the means and facilities so furnished by the carrier, or by some one in its behalf, are sufficient for the reasonable accommodation of the public."

Further on—

"The contention of the defendant just adverted to is, in effect, that the carrier may, without a special contract for that purpose, require the shipper or consignee, in addition to the customary and legitimate charges for transportation, to compensate it for supplying the means and facilities that must be provided by it in order to meet its obligations to the public. To this proposition we can not give our consent. When animals are offered to a carrier of live stock to be transported, it is its duty to receive them, and that duty can not be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipment can be received," etc.

The contract with the stock-yard company is held inconsistent with the public duties of the carrier and void.

This language is as apt and as applicable to the matter of an icing station and ice for a refrigerator car as it is to the circumstances and facts to which it is applied in this decision, and it goes the whole length of the proposition that the respondent railroads must furnish the icing stations and the ice in the bunkers, and do so without extra charge therefor, in addition to the customary and legitimate charges for transportation, as the same are fixed and scheduled and filed with the Interstate Commerce Commission.

Further on the court says that "the carrier must at all times be in proper condition both to receive from the shipper and to deliver to the consignee, according to the nature of the property to be transported as well as to the necessities of the respective localities in which it is received and delivered."

The foregoing decision contemplates and assumes that these extra facilities are to be paid for, of course, but the decision indicates and clearly holds that the only admissible way in which this charge can be collected is through a freight rate adjusted by a consideration of such items of extra expense as the maintenance of a stock yard and the other extra services that the handling of live stock entails, and it clearly holds that it is the duty of the carrier to furnish all necessary facilities and equipments used in carriage.

And it is further to be noted that these respondent roads (and with these roads only we have to do) have shown that it is the customary and usual practice, and entirely feasible and practicable, for them to furnish in the future, as they have in the past, icing stations, and to place ice in the bunkers of the cars. They attempt to justify their present practices solely on the fact that they do not own the necessary refrigerator cars. The answer to which is, that it is their duty to provide them.

For all these inquiries, dismiss from the mind "Armour Car Lines." They are not common carriers; so they maintain, and we agree with them, they are not subject to the order or direction of this Commission in a proceeding of this kind; so they maintain and we agree with that; but it also follows that the reasons which the car lines attempt to thrust in here for defenses are not to be considered. It is safe to take it for granted that the respondent roads have presented all their defense, and it is right, proper, and necessary as a rule of procedure for this Commission to consider only the reasons for this practice assigned by the respondent roads themselves.

Armour Car Lines is a volunteer, an intermeddler, and a self-proven outlaw, and an outlaw that, from the viewpoint of safety, has decidedly improved upon Rob Roy's methods.

Armour Car Lines are commercial pirates and—

"The good old rule
Sufficeth them, the simple plan,
That they should take who have the power
And they should keep who can,"

and the indignation which an honest man feels in contemplating its course is apt to divert one from the real points in this case.

It is to be said here, in passing, that an impression seems to prevail that the railroads are the victims of a mastering influence and are not themselves the culprits, and it seemed at the hearing of this case that the most interested party respondent was not either of the respondent railroads. Be this as it may, we submit that it takes at least two parties to enter into and to execute a conspiracy, and the present

case is no exception to that rule, and one of the conspirators herein, as in the Keith case, is the respondent railroads, and it matters not for the purposes of this hearing how dominant the other conspirator may have been in perfecting this scheme.

However dominant that conspirator may be, the law in its wisdom has provided one way of relief, partial relief, at least, through the provisions of the Interstate Commerce Commission, and when these meek and lowly respondent roads, in obedience to the domination of any third party, violate their public duty as common carriers, and this violation is made out by due proof to the Interstate Commerce Commission, then it is incumbent upon that Commission to say to these meek and lowly carrier culprits: "We command you to desist from these criminal practices and to cancel these criminal contracts. You are the ones whom the law has committed to us the duty of holding in check."

"Sufficient unto the day is the evil thereof." Armour Car Lines can well be left to be looked after at another time and by a different proceeding, and while there was, no doubt, in the wisdom of the Commission some good and sufficient reason for making the Armour Car Lines a party respondent, this complainant can not but feel that any consideration of that party respondent in this connection will tend to cloud the issues in this case.

This complainant claims, upon the foregoing authorities, that these exclusive contracts being admitted and it being admitted that charges for transporting peaches over and beyond the scheduled rates filed with the Commission are being collected, it is incumbent upon the Commission to make an order commanding these respondent roads to cancel these contracts; to furnish refrigerator cars with ice in the bunkers on proper notice from its patrons, collecting no charge therefor, other than at so much per hundredweight as per schedule rate for peaches.

This relief cuts the evil up by the roots and renders it unnecessary to inquire into the detailed discriminative features of the present practices.

These contracts are on their face a violation of the antidiscrimination provisions of the interstate commerce act.

The employment of a common carrier is a public employment, the duty he owes as such is a public duty and can not be delegated. The carriers are responsible for all that may be and for all that is done under these Armour Car Line contracts.

These contracts, on their face, make practicable flexible and varied charges for the service therein agreed upon, and the object of the interstate commerce act would be utterly defeated if any charges for transportations were made that were not scheduled and filed with the Interstate Commerce Commission. We say that because these contracts make varied charges possible and secret brings them directly within the inhibition of the act.

In the case of *Vincent v. C. & A. R. R. Co.*, 49 Ill., 33, 39, 43, which was a case in which it was sought to prevent the railroad company from collecting an extra charge of \$5 per car on wheat delivered to the plaintiff's elevator in Chicago, it is said: "It would be obviously impossible for the companies to unload and store this grain at their ordinary freight depots, to be there held, unmixed with other grain, subject to the order of the consignee, and without incurring great additional expense, and they would hardly claim the right, under their charters, to erect elevators of their own for the purpose of adding the business of commission merchants to that of common carriers. If they were to do so, the tendency of such a practice to create a dangerous monopoly would soon attract the attention of the legislature and lead to its prohibition." This was said in 1868. Since then the tendency of such practices to create a dangerous monopoly has arrested the attention of the National Legislature and it has, by the provisions of section 3 of the interstate-commerce act, expressly inhibited all such practices as are contemplated on the face of these exclusive contracts, and, according to the doctrine of the Keith case, the provisions of these contracts are equally violative of the common law as applicable to common carriers, even before passage of this act.

Further in the Vincent case, the court says: "As to the right of the company to impose the extra charge of \$5 on ground that it is performing additional service, it need only be said that a railway company, although permitted to establish its rates of transportation, must do so without injurious discrimination as regard to individuals. It must deal fairly by the public, and this it would not be doing if allowed to so discriminate as to build up the business of one person to the injury of another in the same trade. It may fix its rate of charges for transporting a bushel of grain from any given station upon its line to Chicago, but, the grain being taken there, it can not charge one rate for delivering it to the elevator of Munn & Scott and another for delivering it at that of appellants. When it takes grain consigned to Chicago its duty is to deliver it in Chicago at any warehouse upon its line or side tracks to which it has been consigned. The object of the Legislature in passing the statute on which we have commented would be utterly defeated if the com-

panies were left at liberty to discriminate at their discretion and in their charges for delivery at different warehouses. That is as much prohibited by the spirit of the law as is the actual delivery to any other person than the consignee, by its letter." So, also, it may be said, the object of the National Legislature in passing the interstate-commerce act would be utterly defeated if the common carriers were allowed to depute some private individual or company to perform a part of the carrier's public duty.

Observe the particularity with which all the possible items of compensation for public carriage are provided for in the commerce act; rates are spoken of, and fares and charges, and they are all required to be shown in a schedule for public inspection. When this act was passed the Legislature knew that there were accessorial services to be rendered by carriers in transporting some kinds of property. For instance, live stock requires special equipment for and attention in carriage; and fruits require special equipment and attention, and the list might be lengthened, and the charges referred to in the act are designed to cover these things, as distinguished from the rates mentioned in the act, and it is evident that none of these refrigeration charges are scheduled, and these contracts are incompatible with the scheduling of the refrigeration charges, and, therefore, are in the teeth of the act.

Necessarily, by these contracts, Armour car lines dominate the situation and there is in this a direct discrimination against other and connecting carriers, who were shown by the evidence to be ready, willing, and able to furnish refrigerator cars to shippers for the transportation of their fruit.

The commission will not stop to inquire as to the degree of injury inflicted upon the public. It is enough to know that the inevitable tendency of such contracts is injurious to the public.

FEATURES OF THE CAR-LINE CONTRACTS.

These contracts are a left-handed recognition by the respondent roads of their duty to furnish refrigerator cars, for upon no other theory is it possible to defend them, and if the roads claim, as they must, that they do thus furnish the cars, then it is the duty of the railroads to pay for them, and be reimbursed from the freight charged by them to the shipper.

Covington Stock Yards v. Keith, supra.

Notice the shiftings in the positions of the various respondents as to the nature of these dealings. It was said in the first letters of the respondent roads to the Commission that they had practically nothing to do with these refrigeration charges, and left the impression that they knew nothing of them; again, it is said that the three-fourths of 1 cent mileage provided for in section No. 5 of the Pere Marquette contract pays for the use of the car and that the compensation is fair and ample, and it is admitted by the road's practices that the charge for the use of the car is a charge for the railroad to pay and which, so far as the three-fourths of 1 cent is concerned, the railroad does pay out of the freight rate.

But it also appears that this compensation does not procure the cars and that the car line does not and will not furnish the cars except upon the condition that the railroads enter into the following additional agreements, (first) to use the car line's equipment exclusively, excepting for fruits destined to certain points outside the State of Michigan (see sec. 2 of contract); (second) to give the car line exclusive management of the refrigeration service and to charge therefor as it sees fit, under certain unimportant restrictions, whereby it is permissible to charge one man the maximum and to carry another's product for nothing; (third) to act as a collecting agent for the car lines without compensation (sec. 4); (fourth) to furnish the car line ice in the bunkers at \$2 per ton—in other words, to do the refrigerating itself at a stated price; and last, but by no means least:

"And the Pere Marquette also agrees to instruct its (i. e., the car line's) agents by wire from the officers of the Pere Marquette such information as may be requested by the car line's representatives."

What, then, is the consideration paid for the use of the Armour cars?

From the car line standpoint, it is more than three-fourths cent mileage, because the sworn testimony is that the respondent roads could not get the cars from the car line by simply agreeing to pay that sum, and the car line witnesses admit that such was the fact, and no one seemed to think of an increased mileage as an inducement to procure the cars.

From the respondent road's standpoint, it was more than the three-fourths cent mileage, because they expressly say that the only consideration that induced them to enter into these contracts was to get the cars; and therefore they paid for the use

of these cars the engagements in these contracts in addition to the three-fourths cent mileage, and, by the terms of the contract and by the evidence in the case, it clearly appears that the additional engagements went to the extent of doing the actual refrigeration in addition to the other things. This would seem to clearly make out, beyond the peradventure of a doubt, that the consideration paid for the use of the cars was the three-fourths cent mileage, and also all the additional contract covenants entered into by the respondent roads; and, on the authority of the Keith case, we say that the charges to be paid for the cars are to be paid by the respondent roads out of their freight rate, and that they can not collect them from the shipper or consignee as an additional charge.

The contract also provides that "the car line's charges referred to shall be billed as advance charges on each carload and shall be paid to the car line by the accounting department of the Pere Marquette monthly, it being understood that in the event property is refused and sold at destination, through no fault on the part of the railroad companies interested or the car line, the car line will join the railroad companies in prorating on a revenue basis any deficit between the amount of transportation charges and the proceeds of sale that may exist. In case consignees refuse to pay the refrigerator charges, and the agent at the destination is unable to collect the same, the railroad shall be reimbursed for the amounts advanced to the car line."

Note, in passing, that even these parties respondent here designate these refrigerating charges "transportation charges." Nothing could more clearly demonstrate that the parties to these contracts were conscious at the time of making them that they were in violation of the law, and that the contracting parties were engaged in a conspiracy to rob the shipping and receiving public than the last sentence quoted herein.

The first part of the entire quotation proceeds upon the theory that the railroads procure this service from the car line and pay them for it in monthly settlements, regardless of whether payment had already been collected from the shipper or not, and on that theory, the service being rendered, the railroad should pay for it, regardless of what might thereafter happen; but in acknowledgment that they are engaged in a game of robbing and grabbing, contrary to all principles in legitimate contracts, it is provided that while the railroad company may proceed upon the theory that the consignee will submit and pay these charges, that, on the other hand, he might refuse to be robbed, and, in that event, the car line agrees to return to the railroad companies the anticipated spoils, which the railroad paid to them before they were actually in the railroad's hands. Ordinary and common thieves always have the spoils in hand before division is effected, but these drawing-room robbers have so improved upon the methods of the common highwayman that they enter into contracts to deliver the spoils before they are in hand, because they have special privileges granted to them, under public laws, in consideration of their performance of the public duty, and this gives them the additional advantage over ordinary highwaymen.

Some rather general testimony was given designed to convey the impression that the Armour refrigerator cars were superior to other refrigerator cars. They failed utterly in showing such fact, but the topic suggests this thought, which seems worth while considering, that in the event that this clearly disclosed plan and design of eventually placing all refrigerator cars under one management should succeed the entire incentive for improvement in the refrigerator car would be lost, and also the benefit of the improvements in the refrigerator car that would naturally come under the processes of competition.

The claimed superiority of the Armour car was its icing capacity, but no sooner were these exclusive contracts made than Armour's agents were on the ground, pushing secret and "half-icing" contracts under the shippers' nose, by the terms of which the shipper is supposed to relieve the respondent road and the car line of the carrier's common law duty to carry safely, and, as an inducement to enter into this half-icing contract, engages to reduce the full refrigeration charge to the shipper to the extent of 10 per cent. Here is an apt illustration of the secret manipulating, shifting, and changing that are open to be made under these irregular practices, and there might still be as many different arrangements and different refrigerating charges as there were parties to make shipment.

It is evidence that the directorate of the car line and of Armour & Co. is practically the same; that Armour & Co. are wide and extensive dealers in all kinds of California fruits, and that they are also dealers in the Michigan fruits. Evidence of this was given by Mr. Murphy, of St. Paul, and by Mr. Meade, of Boston. The icing of these cars in transit is a trust duty to be performed for the shipper and for the consignee, and it is placed by the all-powerful railroad company in the hands of a company that, by one remove only, is a dealer in fruits at the points to which the shipments are made. In other words, the railroad companies have named a trustee to

perform a specific trust that is, by all rules of law, incapacitated for the service, because no man can serve two masters, not even when one of these masters may be himself.

Armour & Co.'s interest as a dealer in the fruits at Duluth would be adverse to the interests of the Duluth consignee, whose refrigerated products Armour & Co. might be caring for, and there are a thousand and one ways in the way of neglecting the consignment in refrigeration or withholding it at an opportune time, or by themselves, through their wire advice, under another clause of the contract, running in a sufficient quantity of fruit to glut the market and cause the competing local consignee a loss upon his consignment. Armour & Co. could well afford to do this, having in hand a general plan and design. The profits on the refrigeration alone would be a reasonable profit on the car to the local dealer, and by these methods Armour & Co. could put the local dealer out of business by simply sacrificing his profits on a few carloads of fruit. Or Armour & Co. might refuse to let a car go, or see that it did not reach a particular destination, when it might be against the interest of Armour as a dealer; but it is vain to extend by illustration the logical and probable practices under these conditions. Can contracts which contemplate and make possible such practices as these be held other than void and against public policy?

DISCLOSURES OF RESPONDENTS.

It is to the written disclosures of the respondents that we must look for a defining of their positions and a setting out of their defense for these practices, and in the disclosure of Armour car lines it is said:

"That the icing and refrigeration charges are made by this respondent, but are not applied by said railroad companies, the said companies' connection therewith being only in the collection thereof for respondent."

The evidence shows that the respondent roads make this charge and this collection possible only by the hold-up process, by giving the car lines an exclusive contract, without which the car lines would be powerless, and while it is true that these charges are fixed by the car lines, and may be manipulated by it in any way that may suit its fancy, yet, when it is made, the charge is a charge of the respondent roads, and they are responsible directly for all that is done in that connection.

It is also stated in this disclosure:

"That it is not true that charges are imposed by respondent, not only for icing or refrigeration, but to cover also the use of the cars."

What has been said in the discussion of these contracts and the contracts themselves and the practices thereunder show conclusively that it is true that these charges are imposed to cover the use of the cars.

There is nothing in the disclosure of the Pere Marquette Railroad beyond the contract itself and the McPherson letter, and in the McPherson letter the first material suggestion is—

"The Pere Marquette Company owns sufficient equipment for the transportation of all fruit shipments between points upon its own system."

This is a tacit confession of its legal duty to provide the equipment, coupled with the claim that such duty is fulfilled by providing equipment for the transportation of all fruit shipments between points upon its own system; but it is admitted, and also proved, that the Pere Marquette is engaged in transporting fruits by traffic agreements with other connecting lines for a continuous carriage to interstate points beyond its system, and its equipment duty is as broad and extended as its traffic arrangements. In the case of *Cin., N. O. & Tex. Pac. Railway v. Int. Com. Com.* (162 U. S., pp. 184), 132, the Georgia Railroad Company's road, unlike the Pere Marquette's, was wholly within the State of Georgia, and it was attempting to defend the collecting of the local rate between two points in Georgia on a continuous haul from Cincinnati, Ohio, and the defense attempted there was of the same nature as that outlined in this part of the McPherson letter, but the court overruled it and says:

"But when the Georgia Railroad Company enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in other rates and charges, it thereby becomes a part of the continuous line, not made by a consolidation with the foreign companies, but made by an arrangement for the continuous carriage or shipment from one State to another, and thus becomes amenable to the Federal act in respect to such interstate commerce."

We claim, under the authority of this case, that when the Pere Marquette enters into the carriage of freight from Michigan to interstate points, through traffic arrangements with other connecting lines, it thereby becomes a part of a continuous line, and thus becomes amenable to the common law of the United States, one of the leading principles of which is that the common carrier must furnish the equipment.

The McPherson letter and the evidence further discloses that in 1903 only 1,632 carloads of refrigerated fruit were handled in Armour cars, and the evidence shows that the season of fruit shipments lasts three months and, taking the respondent's own estimate of one round trip per car per month, 550 cars would do the work. They claim that they could safely rely on getting 100 cars from connecting roads, leaving 450 cars to be supplied by the Pere Marquette at \$1,200 each, or \$540,000. Now, leaving out of consideration, as shown by the evidence, that there would be use for these refrigerator cars ten months in the year, as refrigerators, and that they might be used for the two remaining months as ordinary box cars, and averaging this advanced refrigerator charge from the time of making these contracts at \$30 per car, which is low, and allowing mileage saved on these 450 cars at \$75 per season of three months, there is an additional outgo for refrigerating of \$48,960 and a saving on mileage of \$33,750; in all, \$81,710.

This is the price paid by the Michigan growers per season on the Pere Marquette Line alone for this sweet privilege of being tied down to an Armour refrigerator car, and this sum would pay the interest on the \$540,000 necessary to purchase the cars at 5 per cent, which would be \$27,000, and would leave \$53,710 to be laid up annually for a construction fund to replace the worn-out cars. When Armour witnesses say that the average life of a refrigerator car is six years, they must be understood as speaking in a Pickwickian sense, and certainly on the basis that the cars are in use all the time, but in this supposed case the cars are idle nine months in each year during which there is no wear and tear, and, according to their own testimony, a car so used would last twenty-four years, and the annual \$53,710 devoted to the construction of refrigerator cars to be used only three months in the year would in a few years build more refrigerator cars than are now in use in the United States.

The McPherson letter and the evidence further disclose an extra charge for the railroad company's own cars of \$2 per ton for icing between points on its own line, which includes some extra-state points, and the full Armour charge on its own cars for extra-state points beyond its own line, all of which charge and practices are inadmissible under the law.

The burden of the McPherson letter looks to a defense the same as that attempted to be interposed by the Georgia Railroad in the case last cited, and by the authority of that case is wholly inadmissible.

In the disclosure of the Michigan Central Railroad there is no disclosure made beyond the admission of an Armour contract. Their evident policy has been to disclose as little of fact and as little of their position as a matter of law as possible, thinking, like the ostrich, that by so doing greater safety may ensue.

A LOCAL SERVICE.

The suggestion cropped out during the hearing, but rather covertly, that these practices have to do with a purely local service, and in the disclosure of Armour Car Lines it is stated as one of the objections to jurisdiction, "that the icing and refrigerating of cars is not a matter of interstate commerce." This plea will hardly arrest the serious attention of the Commission. It is puerile and does not merit a serious reply. The traffic is a matter of interstate commerce and the refrigerating is necessary and ancillary to the traffic and has no independent existence or character of its own. When the Federal Statutes and the common law of the United States apply to the matter of traffic, they apply to and control all that is incident and auxiliary to that traffic. The respondent roads did not have the effrontery to make this plea, probably out of regard to the fact that, whether the services were local or not, the roads themselves have been performing them under these Armour contracts.

INEVITABLE TENDENCY OF EXCLUSIVE CONTRACTS.

The question of what is a fair and a just and a reasonable rate in any given case is a very difficult one and one that no court would have the confidence to claim could be any more than roughly approximated by it with all obtainable evidence before it, and, with this fact in mind, we quote the following from the Interstate Commerce Commission *v. Baltimore & Ohio Railroad* (145 U. S., 263, 276) in speaking of the practices before the passage of the interstate commerce act:

"These evils ordinarily took the shape of inequality of charges made or of facilities furnished, and were usually dictated by or tolerated for the promotion of the interests of the officers of the corporation or of the corporation itself, or for the benefit of some favored persons at the expense of others, or of some particular locality or community, or of some local trade or commercial connection, or for the destruction or crippling of some rival or hostile line."

At page 277 it is further said:

"We agree, however, with the plaintiff in its contention that a charge may be perfectly reasonable under section 1 and yet may create an unjust discrimination or an unreasonable preference under sections 2 and 3."

And further, page 280:

"If, for example, a railway makes to the public generally a certain rate of freight and to a particular individual residing in the same town a reduced rate for the same class of goods, this may operate as an undue preference, since it enables the favored party to sell his goods at a lower price than his competitors, and may even enable him to obtain a complete monopoly of that business. Even if the same reduced rate be allowed to everyone doing the same amount of business, such discrimination may, if carried too far, operate unjustly upon smaller dealers engaged in the same business and enable the larger ones to drive them out of the market."

Here is the meat of the whole matter. If respondent's contention is correct, and there is no Federal control over this matter, then Armour & Co. through its control of Armour car lines, dominates the whole traffic and may make or mar, as it sees fit, and eventually will be the only buyer of the fruits at the primary market and the only seller thereof to the consumer. The plan is absolutely sufficient to effect this result, and all that remains is time to work out the details. This Michigan practice is but a small factor in the general design of controlling and handling all the food products of the United States by one single management.

If it is true that existing law is not equal to this emergency and does not inhibit the plain and palpable execution of this design, what a reproach such a reflection is upon the intelligence of the American people and the honesty and integrity of its lawmakers. But we submit that the Michigan fruit grower and the dealers in those products all over the country are in no such helpless condition under existing laws, and that these car-line contracts are against public policy and as effectually inhibited both by the common law of the United States and by the interstate-commerce statutes as are the pooling contracts described in section 6 of the interstate-commerce act. These contracts and these practices are absolutely incompatible with the common law of carriers, which is operative side by side with the interstate-commerce act; incompatible with the schedule provisions of section 6 of the interstate-commerce act; incompatible with the provisions of section 10 the act; incompatible with sections 2 and 3 of the act; and incompatible with all that "breathes from the pores of the act" as a whole; and there is left no loophole for escape through this door of private and unscheduled contracts and charges.

Whatever plea may be put forward for these practices, their inevitable tendency is monopoly by means of discrimination, and such, it must be concluded, is the design and purpose of the parties to these exclusive contracts, whatever other reason may be assigned therefor. We protest against this miserable railroad plea of inability to get the cars, and this suggestion of a domination of the railroads. They are in no sense the victims of an overriding necessity, but are the aiders and abettors in these practices for a sinister purpose. The common practice so far has been for the roads to furnish the refrigerator equipment, and this practice now under inquiry, though growing, is still the exception and not the rule, and can only obtain where the railroad is equally anxious to enter into such a contract as is the other contracting party. The mere existence of such a contract and the power of manipulation of the private-car lines by means thereof constitutes a menace to the freedom of commerce, which it is the design of the laws to protect, and the inevitable result of the working out of these contracts is a monopoly of an important part of interstate commerce. Can we stop to inquire and to receive evidence as to the motive with which such a contract is entered into, where it appears that the necessary tendency of the contract in its workings is discrimination and a monopolizing and controlling of the trade; or, in other words, can any other motive be ascribed to the parties entering into the contract, except such motives as are in keeping with the necessary tendencies of the contract?

The Commission should not stop to inquire as to the degree of the unjust charges and discrimination practiced under these contracts; but the evidence shows discriminations in a number of instances, and, further, that the charges are from 300 per cent to 500 per cent higher than the railroads themselves had charged, even after they had resorted to the unwarrantable practice of making extra charges for the ice, over and above their freight rate. It is enough to know that the inevitable tendency of such contracts is discrimination and monopoly, because these contracts place the whole matter in a private car line's hands for manipulation, and place it in the car line's power to levy excessive charges for these services, to discriminate and to monopolize the trade, and that, without such affirmative action by the railroads, the car lines would not have this power, and that by so doing the railroads aid and abet in the violation of sections 1, 2, and 3 of the act, and by so doing directly violate the

provisions of section 10 of the act. The railroads actually agreed to instruct Armour car line's agents by wire and give them all such information as may be called for by the car line's representative. The contract ought to have had a preamble to the effect that, whereas it is the purpose of Armour & Co. to become the exclusive buyers and sellers of the fruits raised in Michigan; and whereas the respondent roads stand ready and willing to aid and abet therein, now, therefore, in consideration of one dollar, etc., we, the respondent roads, agree, etc.; and here follow the engagements which the railroads have entered into with Armour Car Lines in these exclusive contracts.

I have dwelt upon what these contracts show on their face, and the potential infractions of the laws thereunder, coupled with the inevitable tendencies of these contracts, leaving the actual infractions and violations of the law, as shown by the evidence, to the independent consideration of the Commission, who will have a copy of this evidence before them. A discussion of these would involve a rehashing of the testimony and would be too lengthy for discussion in a brief.

I do not dwell upon the preference or advantages shown by the testimony to have been given to particular persons as, for instance, Moseley Brothers, or other persons, under the half-icing contracts, or such advantages to particular localities as, for instance, Grand Rapids, and the subjecting of this particular description of traffic to undue and unreasonable disadvantages. The evidence, both that on the face of the contract and the oral evidence, shows a multitude of such infractions of the law, but a discussion of them would involve a discussion of the evidence and, besides, they are but outcroppings. What we ask for will at one stroke wipe out all these practices.

We submit that on the foregoing authorities the complaining public have shown themselves entitled to an order by the Interstate Commerce Commission, addressed to these respondent railroads, directing them, first, to cancel these exclusive car line contracts; second, to supply themselves with refrigerator cars sufficient to move with reasonable promptness the fruit from points in the Michigan fruit belt touched by their roads, and to supply and to furnish the initial icings for such cars, collecting for said services no extra charge other than that allowed for and provided for in the higher classification of these fruit products in the schedule of rates, which these roads are required to file, and have filed, with the Interstate Commerce Commission.

The present scheduled rate may or may not be high enough; the evidence to the effect that it is not high enough is by no means convincing, but no complaint is made for collecting that rate; but any collection over and beyond that rate, whether it be \$1 or \$45 to Duluth, or \$1 or \$55 to Boston, we submit is, under the law, absolutely inadmissible.

All of which is respectfully submitted, on behalf of the complaining public, by Knudsen-Ferguson Fruit Company, one of the victims of the practices.

Attorney for Knudsen-Ferguson Fruit Co.

Dated June 15, A. D. 1904.

AVERAGE MILEAGE OF REFRIGERATOR CARS.

The tax returns of various State records contain more or less data on the average mileage per car, per day or per year. The Iowa report of the Cudahy Milwaukee Refrigerator Line gave the yearly mileage of that company's refrigerator cars at 20,232 miles, which is equivalent to about 55 miles per day.

A report of the Cold Blast Transportation Company (owned by the Schwarzschild & Sulzberger Company) to the State of Iowa gave the yearly mileage per car of that company's refrigerator cars at 32,534 miles, which is equivalent to about 90 miles per day.

The National Car Line Company reported to the Iowa authorities that the average mileage of its refrigerator cars in 1903 was 300 miles per day, and of box cars 150 miles per day.

The Provision Dealers' Despatch Line reported to Iowa an average mileage of 300 miles per day for its refrigerator cars and an average of 200 miles per day for its tank cars.

There can be little doubt that the figures for the two companies last mentioned are grossly exaggerated. It is obviously a temptation to car-line companies, in reporting to State authorities for purposes of taxation, to make the daily mileage per car as high as possible, thus reducing the number of cars required to perform a given mileage in the State—the value of the cars being the basis of taxation in most cases.

The following table shows the indicated average mileage traveled by cars of various private car lines in 1903, as computed from returns to various States for purposes of taxation:

	Daily mileage.
Armour Car Lines:	
Refrigerator cars	87
Fruit cars	88
Swift & Co	^a 373
National Car Line Company:	
Refrigerator cars	300
Box cars	150
Provision Dealers' Despatch	300
Nelson Morris & Co	57
Cudahy Packing Co	105
Cudahy Milwaukee Refrigerator Line	55
Schwarzschild & Sulzberger (Cold Blast Transportation Company)	90

DIGEST OF TESTIMONY BY REPRESENTATIVES OF VARIOUS PRIVATE-CAR LINES AT A HEARING BEFORE THE STATE BOARD OF ASSESSORS OF MICHIGAN, SITTING AS A BOARD OF REVIEW AT LANSING, MICH., ON JANUARY 18, 1904, TO FEBRUARY 15, 1904.

Mr. CHARLES G. WILSON, representing the Armour Car Lines and Continental Fruit Express, in his testimony, maintained that 200 miles a day was a fair average daily mileage for refrigerator cars in the State of Michigan. He said that a large percentage of through cars traveled at 350 to 400 miles a day, this allowing for delayed trains. By his average of 200 miles a day he meant that "that included local, through, and cars howsoever used." For the Continental Fruit Express he claimed 225 miles per day, because those cars were unidentified with any local business, and he put them 25 miles a day higher than the Armour Car Lines equipment.

Mr. Wilson noted that the State of Colorado allowed the Armour Car Lines a mileage of 200 miles a day, and that the State of Iowa allowed 90 miles a day on strictly local business.

Cost of cars.—Mr. Wilson testified that certain fruit cars assessed by the State of Michigan at \$500 were not worth more than \$450. He said the car in question had been in service about six or seven years and that it could not be sold for more than \$450. The standard refrigerator car, he said, cost about \$100 to \$150 more than a fruit car.

Conceding that the car which Mr. Wilson mentioned had been in service seven years, and allowing 6 per cent annual depreciation (the allowance provided for by the Master Car Builders' Association), the car at that time would be worth 58 per cent of the original cost.^b The value, as just stated, is given by Mr. Wilson as \$450. If this was 58 per cent of the value of the original cost, that cost would be practically \$776. This was a fruit car. Adding \$100 to \$150, as Mr. Wilson contended should be done, the value of a standard refrigerator car would be from \$876 to \$926. If the car in question had been in use only six years, the value, less six years' depreciation, would be 64 per cent of the cost. This would indicate an original cost of \$700. On this basis the cost of a standard refrigerator car (at the time these cars were built) should have been about \$800 to \$850.

Mr. HENRY VEEDER, representing the Swift Refrigerator Transportation Company, maintained that the average mileage of cars going across the State of Michigan—this is through mileage on fast schedules—was 431½ miles per day for the Swift Refrigerator Transportation Company. Allowing that about 13½ per cent of the cars entering Michigan were engaged in local business or transporting products consigned to points in that State, he arrived at an average daily mileage for all cars of 397 miles per day for the State of Michigan. This was for the Swift Refrigerator Transportation Company. He reported the average mileage of Libby, McNeil & Libby at 420 miles per day, that concern having practically no local business.

Mr. Veeder said that cars to New York would not make a round trip in less than ten to twelve days. He evidently meant from Chicago. The round trip to New York is about 1,800 miles. On the basis of ten days this would be 180 miles per

^aThis apparent mileage for Swift & Co. is obtained by dividing the total car mileage in the State of Iowa by the number of cars reported by the Swift Refrigerator Transportation Company as required to perform this Iowa mileage.

^bThis assumes that depreciation is always figured on the original cost.

day; on the basis of twelve days, 150 miles per day. This apparently makes no allowance for idleness of cars.

Cost of cars.—Mr. Veeder (representing the Swift interests) also stated that the average value of the refrigerator cars of the Swift Refrigerator Transportation Company in 1903 was \$596. The average cost, he said, ranged all the way from \$600 to \$1,000. (NOTE.—He mentioned no higher figure than \$1,000.)

Mr. W. S. BAKER, representing among other companies the Cold Blast Transportation Company, gave the average mileage of cars of that concern at 366 miles per day, "as near as we can estimate it." He gave the average value of the company's refrigerator cars at \$295.25. These cars, he said, were 10 years old. Under the Master Car Builders' rules, therefore, they would be worth only 40 per cent of their original cost. This would indicate an original cost of \$738 per car.

Mr. KAY WOOD, representing the National Car Line Company, which is owned by the National Packing Company, said that "an average of 350 miles a day wouldn't be too much for these cars. I mean a day of twenty-four hours." This statement referred to refrigerator cars in the export beef trade. He mentioned a train of refrigerator cars which left Niles at 12.10 a. m., and arrived at Detroit at 9, thus making a distance of over 200 miles in eight hours and forty minutes, and added that "for a day of twenty-four hours an accurate calculation would show in the neighborhood of 400 miles a day for that train."

Referring to refrigerator cars in the dressed beef trade, Mr. Wood made the following interesting statement:

"The railroads have made special arrangements and put on special trains, which are trains of refrigerator cars and not mixed cars, but refrigerator cars with powerful engines especially adapted for the purpose of hauling that beef to its destination."

Mr. C. J. MILES, at same hearing, representing Streets' Western Stable Car Lines, stated that his company "received and got the same schedules on through business from Chicago to seaboard ports as export dressed beef does." After allowing for detentions and delays and a slower return movement of empty cars he said, addressing the board: "I assure you, gentlemen, in placing the general average performance at 200 miles we have conceded everything that would be fair to this board, or any board similarly constituted." Mr. Miles gave the value of his cars at that time at \$250, and the first cost at about \$500.

Mr. Miles gave the total mileage of his system at 131,238,161 miles, this including Canada and Mexico, as well as United States.

Mr. THOMAS CREIGH, representing the Cudahy Packing Company, stated to the board: "In my house the car people told me that the average mileage through Michigan would be 20 miles an hour for twenty-four hours." He made some calculations in his statement which he contended showed that "the mileage per day is certainly 425 miles. This was the mileage of through cars in Michigan."

[Circular letter No. 37.]

RESUMPTION OF INQUIRY INTO THE GROWTH, DEVELOPMENT, AND OPERATION OF PRIVATE CARS—OPPORTUNE TIME TO SUBJECT THEM TO PER DIEM RULES—THE RATES WHICH SHOULD GOVERN.

CHICAGO, January 17, 1905.

To Members:

Circular letter No. 35, dated September 23, 1904, was intended to conclude the series pertaining to the operations of private cars, and was announced as the closing chapter. It had been arranged to open, with my testimony, the investigation which the Interstate Commerce Commission had ordered into the conduct (or, more properly speaking, misconduct) of private cars, particularly those which are controlled by large shippers; but the evidence then taken (although imperfectly and in some respects incorrectly reported) attracted such wide attention as to assume features of national importance. I had written to the President October 15 and urged him to incorporate in his forthcoming message to Congress a recommendation that private-car companies be placed under the jurisdiction of the Interstate Commerce Commission to the same extent that railroad corporations are presumed to be. That was the primal cause of the subsequent declaration in the President's now famous message that "the abuses of the private car and private terminal track must be stopped." No previous message contained an indictment of private cars, nor have I been able to locate any mention of the subject in a similar communication from the Chief Executive.

Moreover, the President made the demand for restraining action against private-car abuses, etc., the paramount issue, beginning the paragraph referring thereto with the positive assertion that "above all else, we must strive to keep the highways of commerce open to all on equal terms," etc. Such equality those familiar with railroad affairs know is impossible so long as shipping owners of private cars are permitted to continue unchecked their unjust and despotic sway. The appalling facts were plainly recited in my letter of October 15 to the President, and he grasped the same with that readiness which is characteristic of him, and was led to demand that abuses I had exposed during the past two years "must be stopped."

Afterwards I received cordial invitations to appear at the White House with the view of explaining more fully regarding the evils complained of than could be done by letter, but when I responded, December 10, the President was so overrun with callers that he was obliged to ask me to put in writing what I wished him to do, so he could refer to it at convenience. In reporting the circumstance last described to supporters, which was done by confidential letter dated December 16, the following language was employed:

"It is no longer a question of getting to the President, his ear having been obtained, with the voluntary request—which he earnestly repeated—that I would advise him fully and directly in writing."

As the demand for railroad legislation took on a much wider scope than was contemplated, it seemed expedient in the aforesaid letter to remark that "my communications with the President referred solely to private-car abuses;" at the same time I called special attention to the deep import of the declaration that certain acknowledged evils "must be stopped," and urged that it be not underestimated. I had been assured by gentlemen upon whom the President relies that he was "deeply in earnest," and such statement was confirmed by a letter received from his secretary, dated December 22, which contained this assertion: "The matter you are interested in is receiving the President's earnest consideration."

The matter I am interested in is that of private-car reform. I have had no part in the proposed inclusion of other questions—such as enlarging the powers of the Interstate Commerce Commission. It is, however, important that the seriousness of the situation be appreciated. On this point the following is apropos from my letter of December 16:

"I am afraid that certain parties do not fully appreciate the gravity of the situation. They are apt to repeat the mistake committed twenty-five and thirty years ago in relation to the so-called Granger movement. That was clearly foreseen by many, but others refused to bend to the threatened storm. It bids fair to be the same in this instance unless parties discreetly recognize the inevitable. No other subject before the American people is bound to command such earnest attention as the correction of railroad abuses, and the most vicious, inexcusable, and indefensible are those growing out of the enforced use of private cars and the outrageous allowances made to 'industrial roads.' If leading managers do not address themselves resolutely and promptly to the correction of the abuses described, they will only have themselves to blame for the consequences which will surely befall."

After referring in the aforesaid letter to the avidity with which editors of leading magazines were calling for articles on this absorbing topic, which they regard as certain to become "the most engrossing subject of popular discussion, and that it will increase instead of diminish in interest," the following recommendation was made, to which I again invite careful attention:

"My advice would be to put in effect, without needless delay, per diem rates of fifty (50) cents for refrigerators and thirty (30) cents for private stock cars, and I stand ready, on request of or assurances of support from a sufficient number, to convene the interested roads in either section—East or West—to meet for that purpose, and am persuaded that an honest effort on the part of the railroads to inaugurate the foregoing reform would do more to avert threatened trouble than any other course which could be pursued."

Those who have watched the agitation for private-car reform begun by the undersigned nearly three years ago will credit me with sincerity in saying that much of what has lately transpired was predicted. I stated to prominent railroad officers early last year that if I should impart, under oath, a tithe of my experience in relation to private cars, the disclosures would be likely to attract attention throughout the country. They replied that I could not make further exposures than had been contained in my circular letters issued the past two years; whereupon I remarked that those had reached only the railroad profession, whereas if I should testify unreservedly and the salient points be given to the press they would be published in leading dailies and thereby become generally known. The result, I foresaw, would be a storm of indignation that iniquities so gross should exist under an administration pledged to suppress manifest wrong and assure fair treatment to all. I desired

to avoid such disclosures, believing them to be unnecessary, but at the same-time informed parties immediately concerned, that rather than submit to defeat I would exhaust every resource at command, and intimated that an authority was available which no wrongdoers, however powerful, could successfully resist. By that was meant Federal authority, which has since been invoked in protection of those who have long cried in vain for relief. Before turning to assistance as above, I plead verbally and by letter with railroad officers to start the private-car reform, however mildly, and thereby show a willingness to correct evils which every sincere man admitted were grievous and unjustifiable.

It is expedient to repeat and emphasize the order of events lest credit for results which can now be clearly foreseen should be given—as so often is done—to parties not justly entitled thereto. Beginning with their third annual report, dated December 1, 1889, and frequently thereafter, the Interstate Commerce Commission, in reporting to Congress, set forth the evils growing out of the employment by common carriers of cars owned by private companies, and recommended remedial legislation. Little attention was paid thereto, and when an order was subsequently made calling for detailed information regarding the operation of private cars, parties controlling the same denied the authority of the Commission. They consented, however, to give information for the guidance of that body, but intimated their purpose to discontinue reporting, should the data furnished be imparted to others. Furthermore, investigation by the Commission of discriminations resulting from the use of private cars did not evoke widespread interest or noticeably improve matters so far as the public or the railroads were concerned.

Meanwhile, owners of refrigerator cars had grown abnormally great, and were disposed to exercise their power solely from the standpoint of self-interest. Eventually, submission to the abject condition described became so general that when I began to agitate the subject three years ago no one in railroad circles would range himself on my side or openly assist in the work I was, nevertheless, urged to undertake. As the result of my endeavors—exemplified in the circular and other letters written in exposure of the operation of private cars, also through contact with executive officers in different cities—an unprecedented interest in the question was aroused. This, however, was confined to railroad men, few, if any, others being cognizant of the movement we had started. It was not until my testimony was given at the investigation held in the United States court room, in Chicago, October 10, 1904—report of which was circulated by the Associated Press—that the people awoke to a realization of practices in this age of progress and freedom which were worthy of the days of feudalism.

In confirmation of the foregoing, it should suffice to cite the indifference with which the testimony of a Boston fruit shipper, given before the Interstate Commerce Commission in Chicago last June, was regarded by the public, and the sensation that a repetition of those statements by the same party before the House Committee on Interstate Commerce at Washington last week is reported to have created.

Mark the radical change which in this respect has occurred. Heretofore, railroad men spoke of these matters with bated breath and behind closed doors. They would not meet openly to consider measures of reform, lest shippers who control the cars in which they insist that their products shall be carried should vindictively boycott the offending roads. That day has either passed or is rapidly passing, and now there need be no reluctance to administer the required correction. When the President says that "private-car abuses must be stopped" such language can have only one meaning—namely, that they are manifestly illegal. If it were not so and they were proper and legitimate there would be no need to discontinue them. The cry of "stop thief!" can not be raised against one who is quietly pursuing his honest vocation. It can only be appropriately applied to those who are running away with something that does not rightfully belong to them. It is not, therefore, necessary to await an order of the Interstate Commerce Commission or a decree of court before taking action. That ought to be done immediately by the railroads in the territory most affected; that is, wherein the transportation of perishable freight and of cattle preponderates. In the opinion just stated I am not alone. The president of a large and successful railroad wrote me last October:

"I can not understand why the railroads do not all want to produce a different basis of pay for private cars; and it seems to me that it is much better to try to bring about this reform by the individuals of the railroads rather than let the Commerce Commission have the credit for it."

Would anyone have thought it possible six months ago that the head of a great railroad would have had the courage to say, as did the chairman of the board of directors of the Chicago, Milwaukee and St. Paul Railway, in an interview which appeared in a New York paper January 6, "that private cars are an evil, and that

the company owning its private cars demands and receives advantages that the railroads are compelled to allow?"

Witness also the following, which, among other statements credited to railroad officers who were interviewed in Chicago, January 10, is reported by a morning paper to have emanated from a railroad president:

"If these private cars are to be continued in operation, they should be made amenable to the law of common carriers. At present they are neither one thing nor the other. I would like to see them all done away with."

The article, after giving other expressions in line with those just quoted, concludes as follows:

"Railway men in general feel that with all the troubles over the payment of rebates and proposed legislation they have enough to bear, without being saddled with the alleged misdoings of concerns owning private cars. The public is holding them responsible, they say, for something they have nothing to do with in the management of private cars, and a system which has grown up from a small beginning until it is now a dominating factor in many lines of traffic ought to be radically changed, if not wiped out altogether."

Credit is due to the Interstate Commerce Commission for the bolder attitude of those who have suffered from the intolerable oppression of private car lines. This was probably traceable to the investigation of charges for the transportation and refrigeration of fruit shipments from points in Michigan, conducted by the Commission in Chicago, June 2, 3, and 4, 1904. The developments as to the charges for refrigeration and the monopoly of the transportation of fruit from western Michigan by the car line named were such as to elicit a report which expressed the opinion that the charges ought to be reduced, and that it was the duty of the interested railroads to insist upon a reduction.

Fruit shippers were not satisfied with the outcome. They felt sorely aggrieved, and were so outspoken in their complaints of unjust discriminations that they demanded those should be stopped by Federal authority. Their outcries were renewed at the subsequent hearing in Chicago last October, and were voiced so generally in the press that the attention of Congress has been drawn thereto. A leading complainant appeared before the House Committee on Interstate Commerce, in Washington, January 9, and gave testimony which would seem almost incredible. Although many will have noted the testimony of George F. Mead, a member of the Boston Meat and Produce Exchange, given before the said committee, it will not be amiss to quote the following extracts as they appeared in the Chicago Tribune of January 10.

"He referred to the fact that Armour, Swift, and other big packers had of late gone into the fruit and produce business, and he gave abundant instances from his personal experience to show that the packers rapidly were securing absolute control of the commission business of the country; that they were able by illegal methods to stifle competition, and that private car lines had an improper and unholy alliance with railroad companies.

"Out of his personal experience the witness showed that in 1900 the price for icing a car of peaches from Michigan to Boston was \$20. Then, the Armour Company secured an exclusive contract for doing all the icing on the Pere Marquette Railroad. The Armours immediately put the price up to \$33 and finally to \$70. According to the witness, Armour & Co. proceeded to buy up practically all the peaches in Michigan at their own figures, because they found it convenient to refuse cars to other shippers or to be unable to ice anything along the line of the Pere Marquette Railroad until after the fruit had rotted, thus forcing all competitors out of that field entirely.

"The witness said there were exclusive contracts between the refrigerator car line and the railroads which bound the railroad company to notify Armour and other owners of private car lines of all intended shipments of similar products, no matter by whom. The result was, in several cases, that when an independent shipper got off a carload of fruit, which arrived at Worcester, Mass., say, on Wednesday, he found the Armour combination, having been notified in advance by the railroad and having the means to expedite its own shipment, had flooded the Worcester market with fruit on Monday or Tuesday, so the independent shipper found absolutely no buyers for his carload, and was obliged to sacrifice it or throw it away entirely."

Railroad companies can not afford to be parties to transactions as above described. It behooves them, without loss of time, to divorce themselves from alliances which not only a suffering witness but an outraged public would rightly denominate "unholy."

If evidence cumulative of the foregoing were needed, it was supplied at the convention of the National League of Commission Merchants—which began its session

in New Orleans, January 11—in the annual report of President Charles B. Ayers, one paragraph from which was given to the press as follows:

"We have instituted a fight against one of the most unrelenting and unscrupulous monopolies of the age, a corporation that terrorizes the railroads of our land and even says to the public: 'If perchance you are not satisfied to pay our toll for the privilege of living you can let your goods rot, as you must do business with us or quit.'"

In answer, certain carriers may say they are at the mercy of private car lines, not being equipped with sufficient refrigerators to care for perishable freight which, during a "rush" season, originates along their lines and is not a constant traffic. The solution is to form an equipment company to be controlled by the railroads; but such an organization can not be made so long as private car lines are permitted to reap abnormal profits. The allowances paid to private car lines should be promptly reduced; in fact, there is no longer an excuse for hesitation or delay. The abuses complained of, which the President declares "must be stopped," could not flourish if allowances for the use of shippers' cars were limited to a reasonable basis. The succeeding step should be to lower the charges for icing or refrigeration to fair figures. Such services were formerly rendered (and can be procured) at prices much below those now in vogue; and it is in the power of the railroads to insist upon a return to proper tariffs. As a matter of fact, railroad companies ought to furnish the equipment necessary to move the products which originate along their respective lines, and the outcome of the present agitation (if not anticipated in ways I have repeatedly advised) is likely to result in legislation to that effect.

It will be admitted that individual companies could not well afford to acquire the necessary rolling stock to move occasional business during what might be termed "rush" seasons. This would apply to shipments of range cattle, fruit from Michigan, grapes from New York and Ohio, which cases are cited as illustrations, but those emergencies could be admirably met by an equipment company to be controlled by the railroads. Such company would supply special cars on fair terms, and thus place them equally at the command of all shippers. In that event charges for refrigeration would be included in the freight tariffs, as they ought to be, and were until private car lines observed the opportunity to profit abnormally by changing the rule to suit their selfish purposes.

The first step toward a reform, as above, would be to subject all refrigerator and private stock cars to reasonable per diem rates. That brings us to a consideration of what the latter should be.

A prominent railroad president recently wrote suggesting that the per diem rates I had advocated (50 cents for refrigerators and 30 cents for stock cars) were too high. His statement was—

"In view of the fact that a modern box car costs three-fourths as much as a refrigerator car, we certainly ought not make any such rate as 50 cents for refrigerator cars. Stock cars should not have a higher rate than our box cars. I should say 30 cents is high for refrigerators."

Anent the foregoing, it is well to refer to replies elicited by the car service committee of the American Railway Association, published with the proceedings of the convention held last October. They were in response to question as below:

"Do you favor a separate and higher rate for refrigerator cars than on other classes of cars? If so, what rate do you suggest?"

Some of the answers are very interesting and confirm the statement before made, that railroad managers are beginning to express themselves with freedom respecting the operations of private cars. The reply of the New York Central was so completely in line with contentions I have urged in meetings and by circular letter that it is with much pleasure quoted, as follows:

"If all refrigerator cars, including those belonging to private companies, could be brought under the per diem agreement, I would be in favor of allowing them a higher per diem rate than other cars and would suggest 50 cents per day, such rate to be made with the understanding that it is experimental and subject to revision if found to be inequitable."

As Mr. Arthur Hale, the efficient chairman of the car service committee, doubtless had access to the replies when he wrote his "comments on the per diem rules," (Railroad Gazette, October 14 and 21, 1904) we herewith reproduce his reflection on the operation of rule 16 of the per diem code, which excludes private cars:

"No one claims that railroads when dealing with parties not railroads should agree with each other as to the prices they should pay. We find no one designating a uniform rate to be paid private parties for the lease or purchase of steel rails, locomotives, or real estate. There is a consensus of opinion that, as between railroads, a uniform rate should be in effect, and that a per diem rate; but exactly why all rail-

roads should pay private parties and corporations the same price for box, stock, refrigerator, and gondola cars is not evident. Very possibly too much is now paid for certain cars, but that does not prove that the present per diem rate ought to be extended to all private equipment.

"This rule has, however, had one unfortunate result. A prominent railroad has transferred all its refrigerator cars to a so-called private car company and is charging a mileage rate for them. This has caused a good deal of dissatisfaction and has elicited threats of similar action by other railroads; but when it has been seriously proposed to meet this action by increasing the per diem on refrigerator cars to a paying basis, say 40 cents a day, there has been no general acquiescence among the railroads, although it has been hoped that if such an arrangement were adopted it might result in putting all refrigerator cars, railroad and private, on one basis.

"There is one practical difficulty in the way of paying per diem on private cars. In case such cars are not needed for business the railroad on which they are held will object to paying per diem for them; and most of the owners of private cars have no tracks sufficient to hold them when they are not in use."

The last-stated difficulty would not seem to be insuperable. Private car companies, under the mileage basis, receive no compensation for their equipment when it does not move. Why, then, should they be paid for idle time not chargeable to carriers if the per diem method were substituted? When cars are not in use by the railroad and the latter would be debarred from moving them—through their being held for loading, unloading, icing, or otherwise kept standing—while thus delayed they should be free from charge to railroads.

An equipment company organized on the lines I have invariably advocated would solve that problem most satisfactorily. It would have home stations; in fact, cars would be at home upon the tracks of roads that would constitute the said company.

Careful consideration of the circumstances involved satisfy me that a rate of 50 cents per car per day for all refrigerators, whether of private or railroad ownership, and of 30 cents per car per day for private stock cars could safely be inaugurated, and that it would be expedient to make the trial as soon as possible. I admit that it would be inconsistent to allow 30 cents for a private stock car when a much more valuable high-capacity box car belonging to a railroad is exchanged at 20 cents per day, but it should be borne in mind that the prevailing per diem rate was a compromise, and by many, especially in the West, has never been thought sufficiently high. The best arrangement—the one most capable of defense—would be to establish variable rates on the basis of 30 cents for the standard car of 60,000 pounds capacity. That would be quite practicable if per diem accounts should be settled through a clearing house, as was originally contemplated.

The proposed allowance of 50 cents per day for all refrigerators is an eminently just one. It would considerably reduce the payments for private cars engaged in the transportation of dressed beef, fruit, dairy, and other perishable freight in the territory wherein those shipments preponderate, and at the same time would increase the compensation derived by railroad companies for the use of their similar equipment.

A mistake presumably made by those who advocate a lower rate for refrigerators is that 50 cents per day would insure to owners approximately \$15 per month. That could only be on the assumption that the cars would be constantly employed, whereas payments would be restricted to the time when the cars were under control of the carrier—that is, were subject to movement. For example, per diem would not be paid for dressed-beef cars while the latter were being loaded or unloaded or otherwise held at the convenience of shippers and beyond control of the carriers. The reasonable presumption is that refrigerators would not average more than \$10 or \$12 per month. The controlling element in the case would be the disposition to act fairly and intelligently.

After an experience of one year or more under normal conditions it would be practicable to determine whether 50 cents for refrigerators would be fair to owners or not, and if it should appear that a reduction ought to be made the price could be lowered; indeed, having once demonstrated the ability of the railroads to determine the extent and character of the allowances for refrigerator cars it would be competent for the managers, at discretion, to increase or reduce the rate.

Confirmatory of the acceptability of the per diem rates advocated (50 cents for refrigerators and 30 cents for stock cars) I may say that when arguments in favor thereof were, on the suggestion of executive officers of transcontinental lines, made by the undersigned last year and vote thereon was requested, affirmative responses were received from the Canadian Pacific, Northern Pacific, Great Northern, Burlington system, Union Pacific, Atchison, Topeka and Santa Fe, Illinois Central, St. Louis and Santa Fe, Missouri Pacific, St. Louis and Iron Mountain, International and Great Northern, Texas and Pacific, Denver and Rio Grande, and Wabash. The

Southern Pacific dissented because the rate proposed would oblige the company to pay more than it now does for refrigerators, the allowances west of Ogden and El Paso on the Southern Pacific, also west of Albuquerque on the Santa Fe, being three-fourths of a cent per mile for cars when loaded, no account being taken of empty cars.

It is true that large interests, for good and sufficient reasons from their standpoint, deem the per diem rates I have suggested too high, and contend that 40 cents per day should be the maximum for refrigerators, and that no more should be allowed for private stock cars than prevails in the exchange of railroad equipment, but it should be borne in mind that a proposal to fix the maximum allowances for refrigerators at 75 cents per day and for stock cars at 40 cents per day failed of adoption by the controlling lines east of the Mississippi River to the seaboard after laborious efforts put forth with the executive officers in that territory for over a year. The conclusion is therefore forced upon me that the compromise I have indicated is essential to begin the reform.

When it became known that transcontinental lines were almost unanimously in favor of the per diem rates named, I was informed by the President of a line that extends from Chicago to New York that if the plan described should be inaugurated in the West it would certainly be adopted in the East, and he offered to cooperate to that end. As the records hereinbefore quoted show the New York Central to be in favor of 50 cents per car per day for all refrigerators, it should be apparent that the basis suggested—which would as a starter be fair to all concerned—could be made effective and stands the best chance of adoption.

Reverting to the complaints of shippers that charges for refrigeration, when private cars are furnished, are excessive, the statement is renewed that railroad companies ought to compel the performance of such service at rates no higher than those which common carriers are able to command. It must be evident that the public will not allow this matter to rest until the charges for refrigeration are included and made a part of the freight tariffs; and the sooner that result is reached the better it will be for all parties. It can best be accomplished by railroad companies obliterating the obnoxious distinction now made between private cars when engaged in interstate commerce and their own equipment, thereby insuring equality of treatment to all shippers under like conditions.

My concluding thought is, that as every candid railroad officer admits present allowances for private cars, particularly refrigerators, are grossly excessive, it follows that if by competent authority their continuance should be enjoined, few, if any, would stultify themselves by defending the same. Why, then, not "get together," as President Roosevelt earnestly desires the railroads should, and put private cars on a basis which will be both reasonable and defensible? All that is required would be to cast off the yoke that long has been galling to every right-thinking man, and inaugurate conditions such as the undersigned has persistently advocated, and in that way do more than can otherwise be done to anticipate and probably avert legislation which can not, if provoked, fail to be disastrous to railroad companies.

Once more I offer to convene such number of parties, in any given territory, as may desire to meet for the purpose before stated, on receipt of request to that effect. Should the reform be started on the basis outlined it would be certain to extend over the country. I am sanguine it could be commenced, (1) by transcontinental lines; (2) by those extending from the Missouri River to St. Louis and Chicago; or (3) by the controlling roads east of the Mississippi which operate in Central Traffic and Trunk Line territory. It is not essential to obtain the assent of every line in each group above described. Present practices are illegal, and it ought not to be necessary to await the action of all competitors in order to stop that which has been declared unlawful.

In suggesting a conference with the view of starting the private car reform, it should be understood that the per diem rates hereinbefore advocated are not necessarily the lowest that would be considered. If parties believe and are prepared to show that 40 cents per day or less would be sufficient to fairly compensate for the use of refrigerator cars, and that no more should be paid for a private stock car than for the equipment of railroad companies, views thus advanced would be treated considerably. The main thing is for the roads in a given section to "get together" with the determination to improve a situation that has become intolerable alike to the railroads and the public, and the precise form or extent of the reduction in allowances would surely be capable of reasonable adjustment.

Yours, respectfully,

J. W. MIDGLEY.

Before the Interstate Commerce Commission. In the matter of charges for the transportation and refrigeration of fruit shipped from points on the Pere Marquette and Michigan Central railroads. Brief on behalf of the Government.

This is a proceeding of inquiry and investigation instituted by the Commission upon its own motion in consequence of complaints received by it from shippers of fruit from points upon the Pere Marquette and Michigan Central lines to interstate destinations, which allege in substance:

1. That contracts affecting the transportation of fruits have been entered into between the Armour car lines and the Pere Marquette and Michigan Central Railroad companies.

2. That under such contracts Armour car line refrigerator cars are used exclusively by said railroad companies in the transportation of the greater portion of the fruit shipments originating upon their lines.

3. That under such contracts certain icing or refrigeration charges, fixed by the car lines, are applied by the railroad companies upon such shipments.

4. That each icing charges are greatly in excess of icing charges applied by the railroad companies upon this traffic prior to the time during which such contracts have been in force.

5. That the charges are stated to cover not only the icing or refrigeration, but also the use of the car, whereas no charge was previously made by the railroad companies for use of refrigerator cars in such traffic.

6. That the transportation charges of the railroad companies, including rates for icing or refrigeration, subject this interstate fruit traffic and persons engaged therein to excessive, unreasonable, and unjust cost of transportation.

7. That such charges subject interstate fruit traffic originating upon these lines of railroad and persons engaged therein to unlawful discrimination and undue and unreasonable prejudice and disadvantage in the competition in consuming markets with fruit originating upon other lines of railway and with persons engaged in the shipment and sale thereof.

JURISDICTION OF THE PARTIES.

By the order of the Commission instituting the proceeding the Pere Marquette Railroad Company, the Michigan Central Railroad Company, and the Armour car lines were made the respondents. The railroad companies are engaged in this interstate fruit traffic and do not question the jurisdiction of the Commission to make them parties to the proceeding. The Armour car lines is understood to assert that it is not a common carrier, and is, therefore, not a proper party to the proceeding. This car-line company may be properly made a respondent under and by reason of the extended jurisdiction conferred by section 2 of the act of Congress entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, which amends the act to regulate commerce. Section 2 of the act of February 19, 1903, provides:

That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration; and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

This is one of the "inquiries" or "investigations" referred to in the above-quoted section, and such "inquiry" or "investigation" was ordered by the Commission to be conducted "before the Commission," having for its object the "enforcement of the provisions" of the act to regulate commerce, a statute "relating to interstate commerce;" and it is expressly provided by section 13 of the act to regulate commerce that the Commission "may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made." Moreover, the order directing this investigation recites that complaint had been made, and conforms strictly to the provisions of section 13, relating to complaints, by setting forth a "statement of the charges," and calling upon the carriers (as well as the car-line company) to answer the same within a reasonable time, which was specified by the Commission.

The order shows and the record made at the hearing demonstrates that the car-line company is "interested in and affected by the rate, regulation, or practice under consideration."

JURISDICTION OF THE SUBJECT-MATTER.

As the record shows, these icing or refrigeration rates are not intended by either the railroad companies or the car-line company to cover the use of the refrigerator car, and the allegation in the complaint that they do cover the use of the car is based upon a notation to that effect erroneously inserted in the car-line rate schedule.

The complaint as recited in the order of the Commission includes the regular railroad rate with the car-line charge as constituting the cost of transportation to the shipper, but the only subject distinctly raised for consideration is the legality of the "said rates for icing and refrigeration" as part of such total cost or charge for transportation.

The answers of the respondent railroad companies do not question the jurisdiction of the Commission, and no such position was taken by either of them at the hearing.

The answer of the Michigan Central denies that it has entered into any contract or arrangement with the Armour Car Lines for icing and refrigeration service in the fruit traffic for the year 1904; but it admits that it had an arrangement (not a contract) with the Armour Car Lines covering the year 1903, substantially as described in the complaint set forth in the Commission's order.

The answer of the Pere Marquette admits that it is party to a contract of the kind described with the Armour Car Lines, shows that such contract became effective December 21, 1902, and expires November 1, 1905, and avers that rates fixed by the car lines are reasonable and just and subject no traffic to unlawful prejudice or discrimination.

The answer of the Armour Car Lines does raise the question of jurisdiction, not only as to itself, as above stated and considered, but also because, as it alleges, "the matters and things complained of are not part of interstate commerce jurisdiction," and "the icing and refrigerating of cars is not a matter of interstate commerce."

The claim of the Armour Car Lines is understood to be that the service of icing or refrigeration is a separate and purely local service, entirely disconnected from the service of transportation, and that neither the railroad company as a common carrier nor the Armour Car Lines, a private corporation doing the icing service under contract or arrangement with the carriers, is subject in respect thereto to regulation under the act to regulate commerce and statutes amendatory thereof.

Determination of this question of jurisdiction calls for consideration of the obligations of common carriers.

DUTY OF RAILROAD COMMON CARRIERS TO PROVIDE INSTRUMENTALITIES OF CARRIAGE.

The duty of railroad common carriers to provide suitable vehicles of transportation is one of the fundamental duties of the common carrier. (*O. & L. C. R. Co. v. Pratt*, 22 Wall., 123; *Rice v. L. & N. R. Co.*, 11 C. C. Rep., 547; *Rice, Robinson & Witherop v. West. N. Y. & P. R. Co.*, 4 I. C. C. Rep., 131; *Ind. Ref. Ass'n v. W. N. Y. & P. R. Co.*, 5 I. C. C. Rep., 415; 4 Elliott on Railroads, sec. 1470; 6 Cyc. of Law, 372; Ray on Negligence of Imposed Duties, sec. 3.)

The duty of a common carrier by railroad to provide suitable cars applies to all descriptions of traffic as to which, under its charter and in the course of its business, it holds itself out as a common carrier. The cars must be adapted to their intended use. A flat car will not do for the carriage of grain and a plain box car may be unsuitable for the transportation of horses or for the movement of dairy products in certain seasons. This duty can not be transferred to or required of shippers.

(*Railroad v. Pratt*, 22 Wall., 123; Ray on Negligence of Imposed Duties, secs. 3 and 4; 4 Elliott on Railroads, sec. 1474, citing *Beard v. Ill. Cent. R. Co.*, and other cases; *Rice v. W. N. Y. & P. R. Co.*, 4 I. C. C. Rep., 131.)

The obligations and liabilities of a common carrier are not dependent upon contracts, though they may be modified and limited by contract. They are imposed by law, from the public nature of the employment.

The liability of a common carrier of goods and merchandise attaches when the property passes, with its assent, into its possession, and is not affected by the carriage in which it is transported, nor by the fact that the carriage is loaded by the owner. The common carrier is an insurer of the property carried, and the duty rests upon it to see that the packing and conveyance are such as to secure its safety. (*Hannibal & St. J. R. Co. v. Swift*, 12 Wall., 262.)

A railroad company by the very act of accepting goods for transportation thereby enters into an implied undertaking to furnish such cars as may be necessary for their safe transportation. (*Wing v. N. Y. & E. R. Co.*, 1 Hilt. (N. Y.), 241.)

A carrier's duty is not limited to the transportation of goods delivered for carriage. It must exercise such diligence as is required by law to protect the goods from destruction and injury from any source which may be averted and which, in the

exercise of care and ordinary intelligence, may be known or anticipated. Many articles of commerce when transported must be protected from storms, rain, sunshine, and heat, and must have cars suitable for their safe transportation. (Ray on Negligence of Imposed Duties, p. 18.)

If the carrier is informed that the goods are perishable, or should know it from the nature of the goods, the carrier is bound to use all reasonable precautions and means to prevent loss. (*Sager v. Portsm., S. & P. & E. R. Co., 31 Me., 228.*)

It is a part of the common-law liability of the carrier in the selection of its vehicles to provide itself with those of the most approved modes of construction and such contrivances as are in approved use for the prevention of loss or damage to the goods it undertakes to carry. (*Boscowitz v. Adams Exp. Co., 93 Ill., 523.* See also *Steinweg v. Erie R. Co., 43 N. Y., 127.*)

And not only must it provide itself with means sufficient to transact the business for which it has advertised and held itself out to the public as soliciting, but it must provide itself with means of transportation safe and suitable for the business in which it engages. (*Hutch. on Carr., sec. 293; Wood on Railroads, secs. 429 and 430, citing the following English cases: Beckford v. Crutwell, 5 C. & P., 242; Lyon v. Mells, 5 East, 428; Shaw v. York, etc., Ry. Co., 13 Q. B., 347.*)

Where the marks on the package and the waybill disclosed that the subject of shipments is such as should be transported in refrigerator cars during warm weather, the carrier will be liable for neglect in providing such means of transportation. (Ray on Negligence of Imposed Duties, sec. 4, citing many cases.)

If improved cars for the transportation of articles of commerce liable to injury from heat were in use, it was defendant's duty to use such cars in carrying the butter. (*Beard v. Ill. C. R. Co., 97 Iowa, 518.*)

A carrier which accepted for transportation in winter time a quantity of delicate fruit, likely to be injured by freezing unless protected, and sent it on in a common box car, whereby it was injured, when a refrigerator car would have protected it, was held liable for not using the refrigerator car. (*Merchants' Dispatch Co. v. Cornforth, 3 Colo., 280.*)

Where a carrier fails to furnish refrigerator cars as agreed for a shipment of melons, the plaintiff has only to show that defendant is such a carrier, and refuses to carry the fruit, which was the cause of the damage to the shipper. (*Mathis v. So. Rwy. Co. (S. C.), 30 Am. & Eng. R. Cas. (N. S.), 825.*)

The California Fruit Transportation Company, for a consideration, furnished its cars to the plaintiff in error. These cars were agencies or means employed by the plaintiff in error for carrying on its business and performing its duty to the public as a common carrier, one of which was to provide suitable cars for the safe and expeditious carriage and preservation of the freight it undertook to carry. (*N. Y., P. & N. R. Co. v. Cromwell, 49 L. R. A. (Va.), 462.*)

A carrier which receives for transportation over its own line a carload of vendible fruit from a connecting carrier in a car which is not adapted to carrying such fruit is liable for loss of fruit resulting from its failure to put it in a car reasonably fit for its transportation, or to notify the consignee of the condition of the car and fruit and obtain instructions in regard thereto. (*Shea v. C., R. I. & P. R. Co., 66 Minn., 102.*)

The foregoing authorities include the leading cases upon the subject and clearly establish the duty of the common carrier by railroad to furnish suitable vehicles for the safe transportation of each and every article it undertakes to carry. The obligations of the carrier do not compel it to render impossible or even extraordinary service. It may, for example, safely carry perishable fruit for short distances in ordinary cars, and yet be utterly unable to use the ordinary box car in safely transporting the same commodity over long distances. It is doubtful whether it would be required to engage in such long-distance traffic against its will.

But if the carrier notifies the public that it will, for a stated price and under regulations prescribing the method and form of shipment, transport the perishable fruit over long distances, it makes itself a common carrier of such fruit and must, in the discharge of a primary duty, provide such means of transportation, including the car, motive power, necessary handling, and other attention as will enable it to deliver the property in good condition at the point of destination. This duty is inherent in the business of common carriage. It can not be transferred to or required of the shipper, for the carrier only can perform it, and under the cases mentioned failure on the part of the carrier to perform such duty is negligence for which, in case of loss, it may be made to respond in damages.

DUTY OF RAILROAD COMMON CARRIERS TO PROVIDE REFRIGERATION.

The discharge of this duty by the common carrier to transport safely and deliver in good condition all articles of perishable freight which it may undertake to carry

involves not only the provision of a suitable car, which for long distances may be a refrigerator car, but also due care of the property in transit, including the operation of the car to effect the purpose of its design and the object of its use, namely, refrigeration, and this under the present methods of car construction means providing ice in the car during the course of transportation, for which a reasonable charge may be exacted.

The common law undoubtedly requires care in transporting perishable goods, and, under modern methods, we have no doubt that it would be held to extend to proper refrigeration, according to established custom. (*Johnson v. Toledo, S. & M. Ry. Co.* (Mich.), 34 Am. & Eng. R. Cas. (N. S.), 137.)

A railroad carrier that accepts for transportation goods of a perishable nature, which require cars and equipments of a peculiar kind, undertakes, in the absence of some fact changing the nature of the undertaking, that it has such cars and equipments, and that it will properly use them in the transportation of such property. (4 Elliott on Railroads, sec. 1475.)

A carrier that has accepted butter for transportation can not escape liability for damage to the butter from the heat during transportation by the fact that it did not have refrigerator cars which were ready for use, at least when it could have been carried safely by the use of ice in the cars which were used. The sealing of a car containing butter, when received from a connecting carrier, is no excuse for failure to put ice in the car if necessary to protect the butter from the heat. (*Beard v. Ill. C. R. Co.*, 97 Iowa, 518, 7 L. R. A., 280.)

It is said that the rate of charges, as shown by the waybill, was for common cars, and the defendant therefore undertook to furnish no other kind. If the freight charges fixed in the waybill do not express a contract that the butter may be transported so as to destroy its value, and that the carrier is excused from the exercise of the care required of him by law, we think the freight charges in no case will limit the care to be exercised by the carrier and restrict his liability. The defendant was not restricted by the rate of freight charges named in the waybill from claiming and enforcing the payment of a just compensation for charges incurred on account of outlays made in order to safely transport the goods. (*Summer v. Southern R. Assoc.*, 7 Baxt., 345; *Beard v. Ill. C. R. Co.*, 97 Iowa, 518, 7 L. R. A., 280.)

A railroad undertaking to carry produce and properly care for the same is liable for damage to such freight caused by the negligence of the transportation company furnishing the cars for the railroad in failing to properly ice them. (*N. Y. P. & N. R. Co. v. Cromwell*, 49 L. R. A. (Va.), 462.)

A railway company can not escape responsibility for its failure to provide cars reasonably fit for the conveyance of the particular class of goods it undertakes to carry by alleging that the cars used for the purpose of its own transit were the property of another. The undertaking of the plaintiff was to properly care for and safely carry the fruit of the defendant in error, and it is immaterial that the cars in which they were carried were owned by the California Fruit Transportation Company, or that such company undertook to ice said cars or to pay for the ice. As between the plaintiff in error and defendant in error, the California Fruit Transportation Company and its employees were the agents of the plaintiff in error. So far as the defendant in error was concerned, the plaintiff in error was under the same obligations to care for the fruit that it would have been had the refrigerator cars belonged to it. (*N. Y. P. & N. R. Co. v. Cromwell*, 49 L. R. A. (Va.), 462.)

In this *Cromwell* case the court based its conclusions upon the case of *Pennsylvania Co. v. Roy* (102 U. S., 451), in which Justice Harlan said: "The law will not permit a railroad company, engaged in the business of carrying persons for hire, through any device or arrangement with a sleeping-car company whose cars are used by the railroad company and constitute a part of its train, to evade the duty of providing proper means for the safe conveyance of those whom it has agreed to convey." To the same effect see *Thomas v. West Jersey R. Co.*, 101 U. S., 71; *Gibbs v. Balt. Gas Co.*, 130 U. S., 396; *St. L., V. & T. H. R. Co. v. T. H. & I. R. Co.*, 145 U. S., 393.

Where a railroad company had contracted to ship melons in iced cars, the liability of the railroad company for failure so to do does not depend upon whether the company who was to furnish the cars was a common carrier. A common carrier is not exempt from liability for failure to ship melons by the fact that the refrigerator company whose cars it was intending to use failed to furnish them. In an action against a carrier for failure to furnish iced cars for shipment of melons as agreed, it can not show as a defense that it held itself out as willing to haul iced cars to be furnished by another company under a contract with the shipper. (*Mathis v. Southern Ry. Co.* (S. C.), 30 Am. & Eng. R. Cas. (N. S.), 825.)

Said the court in the *Mathis* case (*supra*): "Such a rule would enable a railroad company to shift its responsibility as a common carrier on others, which can not be

done. It must transport when the demand is made, unless excused, and it can not refuse on the ground that others had assumed any part of the duty resting on it as a common carrier."

Where a carrier gave a bill of lading for a car of perishable fruit for shipment beyond its own line, reciting the receipt of the goods in apparent good order, consigned from Michigan to another State, subject to the carrier's liability under the common law and statutes in force in the various States through which the goods might pass, and that the car was to be iced at G. and reiced as often as necessary, the carrier issuing such bill was liable for damage to the fruit by reason of its failure or the failure of a connecting carrier to keep the car properly iced. (*Johnson v. Toledo, S. & M. Ry. Co.*, 31 Am. & Eng. R. Cas. (N. S.), 137 (S. C.).)

The storage and preservation of dressed meats in a refrigerator during the transportation thereof by a vessel is no part of the usual duty of a common carrier, and his obligation concerning the same may be a matter of contract. (*The Prussia*, 88 Fed. Rep., 531.)

This case was appealed to the circuit court of appeals, which, though affirming the decision of the court below, modified the above statement by saying: "It is the duty of the carrier by water, when he offers a vessel for freight, to see that she is in a suitable condition to transport her cargo in safety; and he impliedly warrants that this duty has been fulfilled. And when he proposes to transport across the Atlantic a cargo of frozen meat we agree, as was adjudged in *The Maori King* (1895), 2 Q. B., 550, and *Queensland National Bank v. Peninsula and Oriental Steam Nav. Co.* (1898), 1 Q. B., 567, that he must be taken to stipulate with the shipper that the vessel is provided with suitable apparatus of requisite efficiency to enable him to deliver it in proper order." (*The Prussia*, 93 Fed. Rep., 837.)

An adequate or suitable car equipment is in most cases something in addition to the naked cars or boxes themselves. Where a carrier undertakes to transport passengers, seats, water, ventilation, and lights are essential to the comfort, health, and safety of the passengers, and are therefore necessary parts of an adequate car equipment for that class of traffic. So, when carriers undertake to transport highly perishable traffic, requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to and inseparable from the service of transportation itself. We are of the opinion, therefore, that the defendants, as common carriers, are under the law charged with the duty of furnishing the ice necessary for the refrigeration of strawberries which they undertake to transport, that the expense thus incurred is a necessary element of the cost of the transportation of such traffic, and the amount received or demanded therefor is a freight charge. (*Truck Farmers' Assn. v. N. E. R. Co.*, 6 I. C. C. Rep., 295.)

EXEMPTION OF THE CARRIER FROM LIABILITY ON ACCOUNT OF INHERENT DEFECT IN THE PROPERTY CARRIED.

The carrier is exempt from liability for loss caused by inherent defect in the property transported only in case it has performed its duty as a common carrier in relation to such property. It can not establish an exemption in its favor when the loss (no matter what the nature of the article it undertakes to carry may be) is attributable to its negligence. In these days of modern methods and improved facilities and instrumentalities of transportation, under which the most delicate freight is carried daily across the continent and between all points, the duty of properly caring for perishable goods which the carrier offers to transport over the distance involved in the shipment means the employment of such facilities, including refrigeration to perishable property while in transit; and if they are not furnished, the plea of non-liability because of the inherent nature of the goods will be of no avail.

The carrier, if not himself at fault, can not be held liable for losses caused by the inherent nature, vices, defect, or infirmity of the goods themselves, as in the case of decay, waste, or deterioration of perishable fruits, evaporation of liquids, natural death of an animal, vicious or uncontrollable nature of live stock. (*Hutchinson on Carriers* (2d ed.), sec. 216a.)

Where fruit had been frozen because of the means of discharge from the vessel, which means was assented to by the libellant, no damages were awarded, the carrier having taken reasonable precautions to prevent the fruit from being frozen while in the ship. (*The Alesia*, 35 Fed. Rep., 531.)

While at common law the carrier can not be held for the loss when in no sense the result of its own negligence, yet if it can be shown that the loss might have been avoided by the use of proper precautionary measures and that the usual and customary methods for this purpose had been neglected, the carrier may still be held liable. (*Clark v. Barnwell*, 12 How., 272.)

In a recent decision of the United States Supreme Court (May 16, 1904) the Clark case is cited with approval. "If the loss might have been avoided by skill and diligence at the time, the carrier is liable." (*Cau v. Tex. & Pac. R. Co.*, 194 U. S. —.)

Although the loss might occur by the act of God, yet if it might have been avoided by skill and diligence at the time, the carrier is liable. What would be sufficient care in case of ponderous articles, not liable to deteriorate by exposure, might be the most palpable neglect in the case of costly and perishable goods. (*Wolf v. Am. Exp. Co.*, 97 Am. Dec. (Mo.), 406.)

The law is so well established on this point that further citation need be made for the purpose only of showing briefly the terms used and the kind of traffic involved. Negligence of the carrier and consequent liability is declared upon the following grounds: Want of proper care and diligence (*Elliott on Railroads*, sec.). Carelessness of the carrier in furnishing unsuitable cars (*Ray on Negligence of Imposed Duties*, sec. 59). Leakage of liquids when such leakage could be controlled by the carrier (*Nelson v. Woodruff*, 1 Black, 156). Failure to provide proper ventilation for goods and failure of the carrier to provide sufficient ice to keep meat in course of transportation (*Davidson v. Gwynne*, 12 East, 381, and other cases cited in *P. on Bills of Lading*). Want of due diligence in ventilation and caring for grain (*Lewis v. Success*, 18 La. Ann. Rep., 1). Failure in transporting wine to provide ventilation and prevent or check damage the goods might sustain from natural causes (*The Invincible*, 3 Sawyer, 176). Failure to unpack and dry goods that have become wet (*Choteaux v. Leach*, 18 Pa. St., 224; *The Niagara v. Cordes*, 21 How., 7). Omission to have skins beaten and ventilated when hides are liable to be destroyed by worms (*The Bark Gentleman*, 1 Blatch., 196). Failure to feed a horse in the carrier's custody, the right existing to recover from the owner the cost of its keep (*Gt. No. R. Co. v. Swaffield*, 9 Exch., 132).

It is true that the case of *The Prussia*, hereinbefore cited under another heading, as decided in the circuit court, was to the effect that refrigeration during transportation by a vessel is no part of the usual duty of a common carrier (88 Fed. Rep., 531), but this was substantially overruled by the circuit court of appeals in the following language:

It is the duty of the carrier by water, when he offers a vessel for freight, to see that she is in a suitable condition to transport her cargo in safety; and he impliedly warrants that this duty has been fulfilled. And, when he proposes to transport across the Atlantic a cargo of frozen meat, we agree, as was adjudged in *The Maori King* (1895), 2 Q. B., 550, and *Queensland National Bank v. Peninsula & Oriental Steam Nav. Co.* (1898), 1 Q. B., 567, that he must be taken to stipulate with the shipper that the vessel is provided with suitable apparatus of requisite efficiency to enable him to deliver it in proper order. (*The Prussia*, 93 Fed. Rep., 837.)

A recent exhaustive decision by the United States Supreme Court, reversing the district court and circuit court of appeals, is to the effect that a water carrier holding itself out as a common carrier of perishable goods has the initial duty of providing and operating proper refrigerating apparatus for the safe carriage of such commodities. This case applies the common law as modified by the Harter Act. (*Martin v. Southwark*, 191 U. S., 1.)

CHARACTER OF THE SERVICE OF REFRIGERATION.

The respondent, the Armour Car Lines, will doubtless contend that the refrigeration charge is for a local service and that such local service, while in aid of transportation, is not a part thereof. If it be the duty of a railroad company to provide a refrigerator car for the carriage of perishable fruit, it is plainly the duty to so operate that car during the transportation as to accomplish the object for which it is furnished. These refrigerator cars are really summer and winter cars. They are used by the respondent railways to prevent freezing in winter and decay from heat in summer, and they are fitted with apparatus designed to secure free circulation of air. Is it the duty of the common carrier to open and close the ventilators as care of the fruit may require? Is it the duty of the carrier to so use these cars that the traffic carried will not freeze in cold weather? Undoubtedly it is. If that is so, its obligation to use the icing appliance is also manifest, and the mere circumstance that ice must be supplied from time to time can not change that obligation. Especially is this so when the carrier's right to impose a charge for this necessary care, either as part of the rate or as a separate exaction, is established.

The agency employed by the carrier to put ice in the car is no more subject to regulation as a common carrier than is the conductor in charge of the train or the engineer who runs the engine, and the mere subsidiary service of icing the car is no more subject to separate control than is that of the man who tends the switch or the employee who supplies water for the locomotive boiler. These, with other necessary

services, make up, however, the service rendered as a whole by the carrier to the public, for which it is entitled to tax the public as represented in its patrons, and for which and the facilities it renders therefor it is subject, in respect to interstate transportation, to regulation under the act to regulate commerce by this Commission.

In the carriage of perishable fruits over considerable distances refrigeration is as indispensable a part of the transportation service as that the car must be inclosed to protect the traffic from ravages of the weather. It is required in transportation for the same reason that transportation involves movement, for freight must be transported safely or it will not be transported at all. Whatever is necessary to the transportation which the common carrier has offered to perform is part of the duty to be discharged by the common carrier, and is therefore a part of the service of transportation. The cases cited under other headings fully declare the obligations and responsibilities of the carrier in this respect.

Whatever is not necessary to the proper performance of the service which the common carrier holds itself out to do for hire may well be considered, if rendered, as accessorial or so remotely involved as to bear no direct relation to such service, and in considering these outside matters it should be kept in mind that some of them are regarded as disconnected from the transportation service proper by force of long usage or the nature and requirements of commodities, and the methods employed in commerce and trade.

The feeding, watering, and resting of live stock is a duty enjoined by statute as well as by the common law. The carrier must furnish the unloading and loading facilities; custom has fixed in different localities the price of services attendant upon watering and feeding, and the general rule is that the shipper or his employee travels upon the same train to look after the needs of the stock. The nature of the traffic and the universal method of caring for the stock are such that the carrier is not generally under the necessity of doing more than operate the train with reference to permitting the feeding, watering, and resting of stock. But if the carrier should include as part of its service the work and expense of handling, feeding, and watering the stock, imposing a charge therefor, either separately or including it in the total rate, excluding the shipper from any opportunity to perform the service itself or having it done by others, a violent change in established usage would occur, with the result of incorporating what are now mere accessorial services into the transportation service itself.

Elevator service in the handling of grain is a service which at initial points may be paid for by the shipper or at intermediate points may be paid for by the carrier as a matter of convenience in handling and transfer from one line to another; or, again, it may be paid for by the shipper or the carrier at terminal points under established tariff regulations. This service may be provided as a matter of economy or convenience to the carrier in some instances, or for the purpose of handling grain antecedent or subsequent to the transportation. Sometimes the shipper desires grain to be cleaned in transit. If he does, that is plainly a service which the transporting company may not be called upon to provide as a part of its primary duty as a common carrier.

Insurance charges evidently relate to a transaction entirely separate from the service of transportation. Safe transportation by rail does not depend upon insurance, and the shipper is left wholly free to exercise his option to insure or not insure traffic carried under regulations prescribing owner's risk.

Switching, bridge, and terminal services are ordinarily included in the rate or provided for separately in tariffs of the carriers. It may occur as it did in the *K. & I. Bridge Co. v. Railroad Co.* (37 Fed. Rep., 567), that the bridge company itself is not a common carrier, just as here the Armour Car Lines is not a common carrier; but the railroad company's rate on interstate traffic to and from Louisville in that case covered transportation across the bridge, and was not under consideration. The question there was whether the bridge company was a common carrier entitled to equal facilities in the interchange of interstate traffic. It was really a contest concerning the use of one of two bridges at Louisville.

Here, again, whether switching or terminal charges are subject to regulation as part of charges on interstate traffic depends upon the offer to carry, and other facts in each case; in other words, how the terminal service is connected with the interstate transportation service. Carriers leading to Chicago established a live-stock terminal charge for delivery at the Union Stock Yards in Chicago. The Stock Yards Company, over whose lines the traffic was carried in Chicago to the stock yards, has been held not to be a common carrier, but the railroad companies bringing the live stock to Chicago and providing for delivery at the stock yards were held responsible for the charge. They had undertaken to deliver stock at the stock yards, and they thereby made themselves subject to regulation in respect to the additional charge

thus imposed upon the traffic. (*Cattle Raisers' Asso. v. Ft. W. & D. C. Ry. Co.*, 7 I. C. C. Rep., 513.)

Drayage and cartage are usually local services for which the railroad carrier assumes no responsibility. The shipper is left free to do his own cartage. The railroad company may even undertake to do the work for a fixed sum, and for such purely accessorial service it may be questioned whether the charge therefor would be subject to regulation as part of interstate commerce so long as shippers or consignees are permitted to exercise the option of carting the goods for themselves. But here again, let the carrier establish a rule, as a condition of receiving, transporting, and delivering goods, that the goods will only be received or delivered at warehouses or stores of shippers and consignees, and it thereby makes itself a common carrier from and to such warehouses and stores, and, as to interstate traffic, its acts in regard to such service and charges imposed therefor would become subject to regulation under the act to regulate commerce. Any cartage agency it may employ would not be subject to any such regulation as a common carrier, but plainly the carrier would be. The well-known *English Parcels* cases are in point upon this subject: *Pickford v. Grand Junct. Ry. Co.*, 10 Mees. & W., 399; *Baxendale v. Gt. W. Ry. Co.*, 3 C. B. N. S., 324; *Garton v. Gt. W. Ry. Co.*, 6 C. B. N. S., 639.

Express companies perform services which were well known at the time the act to regulate commerce was passed. They collect, have transported, and deliver certain kinds of traffic requiring speed in transportation upon which charges greatly in excess of freight charges are imposed. This Commission has held that these companies are not subject to that statute. (*In re Express Companies*, 1 I. C. C. Rep., 349.) On some roads milk is carried only by the express companies. It is understood that fruit is sometimes carried in that way. Whatever may be finally held when the question is squarely presented as to the responsibility of the railroad company for the rates it allows to be charged for express matter carried over its line, the controlling fact here is that this perishable fruit traffic is transported by these carriers as freight under the well-settled obligations resting upon them as to the safe transportation of freight articles.

The test of the carriers' obligations and responsibilities, as hereinbefore shown, is clearly found in the service it undertakes exclusively to perform. The business of common carriage by railroad is a natural monopoly, and when the railroad company holds itself out to do certain things as a common carrier which are necessarily or by force of conditions imposed by it upon the traffic as part of its service as such common carrier, it assumes the duty and obligation of performing the whole of such service, and is subject to regulation by governmental authority respecting any part of such service. This principle seems fully covered under this and other headings herein, but it may be of value to consider separately (if it shall be held not to be the duty of the carrier to refrigerate traffic by means of the refrigerating appliance which it has furnished as a part of a refrigerator car put in service upon its line) whether the carrier, when it enters into an exclusive contract with a private corporation to do the refrigeration, thereby preventing the shipper from providing refrigeration at his own cost, does not make the icing a part of its service and subject itself to regulation as to the reasonableness and justice of the charges imposed upon the traffic for refrigeration.

ASSUMPTION OF OBLIGATION BY THE CARRIER UNDER CONTRACTS WHICH EXCLUDE THE SHIPPER FROM PROVIDING REFRIGERATION OF PERISHABLE FRUIT.

The great bulk of carload traffic on railroads in the United States is loaded and unloaded by shippers at their own expense under tariff regulations prescribed by the carriers. The service of loading and unloading goods is in itself purely local, and yet it is a service which is necessarily connected with the transportation. Some rates on carloads cover the loading and unloading as well as the service of hauling. When the carrier itself undertakes to do the work of loading, as undoubtedly it may rightfully do, it may either make the transportation rate cover the whole service, or as is done in Great Britain, segregate the unloading and loading charges from the charge for transportation. (*Walker v. Keenan*, 73 Fed. Rep., 755; *I. C. C. v. C., B. & Q. R. Co.*, 186 U. S., 320.) In either case the charge must be reasonable and just. Now suppose the carrier should notify its shippers that all loading and unloading of carload traffic shall be done exclusively by the Armour Car Lines at rates fixed by that corporation. It can do that only upon assumption by itself of the work of loading and unloading and employment of the car lines to perform that service. Unquestionably the railroad company would be responsible for the reasonableness and justice of charges so imposed by its employee or agent, the car lines. In that state of affairs there could be no freedom of action left for the shipper.

That is precisely what is done in this case. Here are fruits grown in the State of Michigan which ripen and are ready for shipment in the summer and early fall. The carriers have made the necessary arrangements for through transportation, and have established rates on this fruit to many long-distance destinations. They hold themselves out as common carriers of this delicate traffic. Recognizing that the fruit can not be safely transported in ordinary cars, and realizing their duty to furnish suitable equipment, the initial carriers have acquired, and for each such shipment they provide, refrigerator cars to be used in the transportation. They formerly refrigerated the cars without any charge in addition to the rate. They subsequently established a refrigerator charge amounting to the cost of icing, whatever that might be. They finally, for reasons of their own, entered into an exclusive contract or arrangement with the Armour Car Lines to not only furnish the cars, but to do the refrigeration service at rates which the car lines might charge, but not to exceed certain sums agreed upon and referred to in the contract. In consequence of that contract or arrangement the Armour Car Lines has since done the refrigerating of these cars at points of shipment and at various established receiving stations en route. The shipper can not get a refrigerator car upon the respondent railway lines in Michigan for the shipment of peaches or other fruit to destinations requiring refrigeration unless he pays the Armour Car Line icing charge. He is debarred from doing the icing himself and from arranging to have it done en route. He can not ship a car of fruit to Boston, New York, Louisville, Dubuque, or anywhere, in the season requiring refrigeration in transit without paying the charge imposed by the Armour Car Lines under and by virtue of its exclusive contract with the railroad company. The shipper can not even provide his own car and do his own icing. The car-line charges are billed by the railroad company and collected by the railroad company. If the icing or refrigeration service is not a railroad function as to this traffic, the railroad company has made it so in the most effective manner possible. If the theory of the respondent, the Armour Car Lines, is correct, then under this state of affairs neither the railroad company nor the shipper has anything to do with the icing, and by virtue of some right as yet undiscovered this foreign car-line corporation, claiming to be neither a common carrier nor the agent of a common carrier, nor maintaining any contract relation with the shipper, can lawfully step in and assess against shippers, upon traffic going over the Pere Marquette and Michigan Central railroads, a charge for icing cars furnished by those roads. It is submitted that the icing or refrigeration of these cars can only be done by or under the authority of the railroad company or the shipper, that it inheres in one or the other of these parties, and if in the shipper the railroad company has transferred the duty to perform that service to itself by the exclusive contract or arrangement with the Armour Car Lines. It seems unnecessary to repeat the previous citations made herein under other headings which support this obviously sound proposition.

Section 1 of the act to regulate commerce requires that all charges made for any service rendered in the transportation of property, or in connection therewith, shall be reasonable and just, declares any unreasonable or unjust charge for such service to be unlawful, and makes the term "transportation" include all instrumentalities of shipment or carriage.

This section was construed by the Commission in the Truck Farmers' case (6 I. C. C. Rep., 295) to apply to the refrigeration charge, because the refrigeration service is inseparable from the service of transportation itself; but if the Commission shall nevertheless now conclude that the refrigeration service is not part of the transportation service, and is something to be performed or secured by the shipper, then it is submitted that the regulation of the carrier, made in consequence of the contract with the car lines, whereby the shipper is completely deprived of all opportunity to care for his own property in transportation, makes the refrigeration service one which the carrier undertakes to render "in connection" with the "transportation of" this species of "property," carried by the carrier in refrigerator cars used by it as "instrumentalities of shipment and carriage" in such "transportation."

DUTY OF THE CARRIERS TO PUBLISH REFRIGERATOR CHARGES.

The sixth section of the act to regulate commerce requires carriers to publish their transportation charges and file copies with the Commission. They must include in their tariffs not only the rates for carriage, but such tariffs must also show separately therein the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of their rates and charges for transportation. The respondent carriers herein are required by this section to include in their schedules of charges exacted by them, or through the agency of the Armour car lines, for the refrigeration of this fruit traffic from Michigan, and their failure to do so renders them subject to penalties provided in the statute as amended.

THE REFRIGERATION RATES CHARGED AND COLLECTED BY THE RESPONDENT RAILROAD COMPANIES PURSUANT TO THEIR EXCLUSIVE CONTRACT OR ARRANGEMENT WITH THE ARMOUR CAR LINES ARE UNREASONABLE AND UNJUST AND SUBJECT SHIPPERS AND CONSIGNEES OF MICHIGAN FRUIT TO UNDUE AND UNREASONABLE PREJUDICE AND DISADVANTAGE.

The time since the transcription by the reporters of the notes taken at the hearing has been too short to permit careful reexamination of the testimony and exhibits, and the statements made below are based upon recollection.

The respondent carriers for a long period of years furnished refrigeration for these fruit shipments without any charge in addition to the straight transportation rate.

These carriers in 1901 or 1902, by amendment of the official classification, which they adopt and use, and which is by law a part of their rate schedules, imposed a charge for the icing of fruits, including grapes and berries, which is testified to represent practically the actual cost of the icing service.

Prior to the 1902 season on the Pere Marquette and 1903 on the Michigan Central, when Armour Car Line cars were used for the fruit in question, and icing was done by the car lines at the request of the shipper, the charge made by the car lines was greatly less than has since been exacted by the car lines under the contract or arrangement, and approximated the cost of icing charge made by the carriers. For example the Armour icing charge per car to Boston was \$20. Upon the taking effect of the contract in 1902 on the Pere Marquette, and of the arrangement of 1903 on the Michigan Central, this charge to Boston was made \$55. The Armour Car Line refrigeration service was as satisfactorily performed at the \$20 charge as it has been under the \$55 charge.

The icing charge formerly made by the carriers to Dubuque and Duluth has been as low as \$7.50 per car and up to \$12, and, perhaps in rare instances, \$15 to Duluth. The charge now is \$37.50 per car to Dubuque and \$45 to Duluth. Similar disparities are shown between former and present charges to market points.

Under these high refrigeration charges the customary markets for Michigan peaches in Duluth, St. Paul, Minneapolis, Dubuque, and other cities have been nearly, if not entirely, closed, at least to the extent of transferring the demand for peaches in those markets when practicable to peaches grown in other sections. In addition to this high icing charge the ordinary freight rate to Duluth has been increased about 10 cents per 100 pounds.

The shippers and the traffic are undoubtedly benefited by any arrangement made by the railroad companies under which a steady supply of refrigerator cars is furnished, for such cars are indispensable to the transportation the carriers undertake to perform; and although many shippers controlling large proportions of the traffic testified that they could secure plenty of such cars from lines connecting with the respondent railroads, the provision of such cars promptly by the initial carrier without restriction as to destinations, as required by shippers, is of great advantage in the trade. This, however, is nothing more than the discharge of the obligation resting upon the carrier when it, with its through-line connections, offers to carry these perishable commodities to long-distance markets. The provision of these cars by the carriers adds no justification for the excessive and burdensome charges imposed for the refrigeration of such cars.

This traffic is carried under a provision in bills of lading releasing the carrier from any loss or damage resulting from causes beyond its control, or by floods, fire, riots, strikes, leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay. To the extent that it may control any such loss or damage it is not exempted from liability in the bill of lading or at law. In the contract between the Pere Marquette and the Armour car lines the latter agrees to indemnify the carrier for any damages it may be required to pay upon claims arising from any failure on its part to properly ice and keep iced the refrigerator cars furnished under the contract. The same agreement is included in the arrangement with the Michigan Central.

The service provided by the Armour car lines is satisfactory to the shippers. The testimony strongly indicates that frequently more ice is placed in the cars than is necessary to insure safe transportation of the fruit. This is further supported by the fact that what are termed half-tank rates are offered to shippers upon condition of absolute release on account of "spoilage." These are about two-thirds the full icing rates. Michigan peaches have usually been sent to Boston in greatest quantity in September, and the transportation to Boston, Duluth, and other destinations involving carriage through the more northerly section of the country in the fall can not require the elaborate icing which the car lines claim to give during the entire season. Grapes, a much harder fruit than peaches, are given as much ice as peaches. There is no distinction made in the icing tariffs between peaches or plums and grapes,

nor are lower charges made for shipments during the cooler months, or for shipments involving carriage in northern latitudes only.

These icing tariffs give a large profit to the car lines, although the duty of the carrier to safely transport seems to prohibit it from adding considerable profit to the economical cost it previously incurred in discharging its common carrier's obligation respecting preservation of the traffic in transit. Certainly it can not rightfully provide an extravagant and unnecessary service and insist upon a large profit to itself or its agent.

Numerous shippers testify that they could provide their own icing and arrange for reicing at customary reicing points, and the evidence shows that the cost of the necessary refrigeration would be far below the charges imposed under the arrangement with the Armour car lines.

The carriers discriminate unjustly in the application of the icing charges and pay rebates to Moseley Brothers, of Grand Rapids, who own a line of refrigerator cars. These cars, notwithstanding the exclusive car arrangement with the Armour car lines, are used by the roads for shipments by Moseley Brothers. All such shipments are billed out with the Armour car line icing charges, which the consignee is required to pay. These charges, less the actual cost of icing, are paid by the railroad companies to Moseley Brothers. All shipments by other shippers are invariably charged with the car-line icing charges, and these are paid over to the car lines by the railroad companies.

Prior to the arrangement with the Michigan Central and with other roads leading from Grand Rapids, such as the Grand Rapids and Indiana and Grand Trunk, shipments from the city of Grand Rapids over the Pere Marquette were excepted in the contract with that company from the application of the Armour car-line charges. This was due to the competition for the traffic from Grand Rapids, under which the icing charges on shipments from that point must be as low via the Pere Marquette as by any other line leading therefrom. The extension of the Armour car-line charges, under arrangements with the other lines, completely suppressed this beneficial competition at Grand Rapids, a large fruit-shipping point. In the same way the contract with the Armour car lines over a single line, like the Pere Marquette, extinguished all competition for the furnishing of ice to the railroad or to shippers for this traffic at initial and reicing points.

Respectfully submitted.

MARTIN S. DECKER, *Special Attorney.*

GOVERNMENT CONTROL OF RAILROAD EARNINGS.

MINNEAPOLIS, *January 12, 1905.*

MR. GEORGE W. SEEVERS,
General Solicitor, Oskaloosa, Iowa.

DEAR SIR: I duly received your favor of the 30th ultimo requesting some expression of my views with regard to the control of railroad freight rates by the Federal Government. I have been delayed in answering, by the pressure of other business and the desire for sufficient time, without interruption, to write you at some length on the subject.

I want in the beginning to say something about the soundness of the premises upon which are based the popular beliefs that railroad earnings should be under Government control, and that the present rates sometimes give larger earnings than the railroad companies should have.

The popular arguments made to justify Government control of railroad earnings are based upon the facts that railroad companies may exercise the right of eminent domain and have in some cases come into possession of lands previously owned by the State. I can not see that the railroads are indebted to the Government, State or Federal, on either of these accounts.

No Government of ours has ever given the right of eminent domain to a railroad company in the sense of granting it for the benefit of that company. The right of eminent domain is for the public good and was given for that and for no other reason. It was granted because without it there never could have been a highway and the country could not have been populated nor developed into the great commonwealth it is. There may be propriety in the Government, State and Federal, claiming a right to say what everyone shall charge for service on the public highways that have been made possible through the exercise of the right of eminent domain and paid for by the public, but the State's relation to public conveniences constructed with private capital must be essentially different.

A railroad company, in building its line, avails itself of the right of eminent domain, which right is given for the public welfare, but it must pay for everything it acquires through the exercise of that right and it must, in actual practice, pay more than the property used is worth. Any railroad company will pay very much more than the value of property it desires to use rather than resort to condemnation proceedings. It seems an unwarranted attitude for the State to claim that it has given anything to the railroad company, or that the railroad company is indebted to the public or any individual on account of property acquired and for which it has paid the owner's price or, in case of a disagreement, full compensation as determined by his neighbors and as fixed by the law of the land. The equity of the latter settlement is so well understood and so fully recognized by State and Federal Government that the title secured in either way is held to be equally valid. It is neither reasonable nor honest to set up the claim that in some way the railroad company owes somebody, or everybody, for property it has lawfully obtained and fully paid for.

It is not now and never has been possible at any time to find one member of any legislative body willing to admit that he voted for a law giving the right of eminent domain to railroad companies for the benefit of the railroads. He would be mistaken if he did make such an admission.

If the right of eminent domain should be withdrawn from the railroad companies it would greatly enhance the value of railroad securities and very greatly retard the progress and development of the country and its people.

The State authorizes the building of a railroad and the exercise of the right of eminent domain when essential to the proposed construction. The law provides for compensation where damage is claimed by property owners and settlements are made in accordance with the law, either by agreement or as determined by judicial proceedings. There are instances other than where the right of eminent domain is exercised, when the property of one citizen is damaged by the action of another, and there are other instances where one party insures the property of another against damage, and in these instances, where the interested parties disagree, the amount of damage is appraised and fixed by a tribunal legally established, as in condemnation proceedings for highway purposes. I believe that in these instances the injured party having been paid the sum fixed by the court of appraisement, has no further claim against the citizen or company held to be liable and that neither he nor his neighbors, nor the State can assume, by reason of this occurrence, any jurisdiction over the business or revenue of the party who pays the damages.

When a railroad company condemns the property of a citizen it not only exercises a right enacted wholly for the public good, but it will be conceded that the public does, as is intended, benefit by the exercise of this privilege. The party whose property is taken is fully compensated through the protection he is properly afforded by the operation of the law; but if after the transaction is completed the railroad company can be further indebted to any one for the property which it has legally acquired, it is impossible that the additional obligation should be to any other person than the one whose property is taken or damaged. The public never had any interest in the property and can not acquire nor honorably claim any interest by reason of any lawful transaction between its owner and the railroad company.

Almost every citizen appears to believe that railroad companies owe the Government something on account of land grants, yet it seems technically and actually true that no railroad company ever received a grant of land, either from the State or Federal Government, in the sense that is generally understood and accepted. The Governments have at different times made bargains with certain syndicates or corporations, upon the fulfillment of stipulated conditions, to turn over to certain railroad companies specified tracts of land. The obligation of the railroad company having been fulfilled, the Government has carried out its part of the agreement. By making these trades the States has rapidly added to its wealth and population; so it may be said that the Government has not only been a trader in this matter, but a good trader.

You have doubtless noticed at different times that men arguing in favor of Government control of railroad earnings because of public-land grants have admitted some confusion of mind because of the circumstance that only a portion of the railroads have had land grants. An understanding of the fact that the State has never presented as a gift any lands to any railroad company eliminates all cause for such confusion while considering this question.

The Government can not only demonstrate readily that it has made very excellent bargains with the railroad companies, but it can further show that it has never delivered to any railroad company a single particle of land that has not been paid for by the railroad company through the complete fulfillment of its obligations as set forth in its contract with the State.

I doubt if any citizen who gives the subject sufficient thought or study to know and appreciate the truth will ever claim that the railroad companies are indebted to the State because of the transfer, for an agreed consideration, of these public lands. The average citizen has too much dignity and honor to look with patience or favor upon a person who having exchanged or sold an article to another should go about thereafter saying that he had given it, and I am sure that everyone wants and expects to see the Government display as much of honor and dignity in its business transactions as they would require of an individual member of society.

It is a well-known fact that the railroads in this country give the best and cheapest transportation in the world, and at the same time pay very much higher wages to their employees than railroad employees receive elsewhere. Here is an inconsistency that has been generally explained as one of the miracles performed by American genius. American genius can accomplish much, but not miracles, and we must find some other explanation of this condition if we are to have the truth. It is true that American railroads accomplish these results, pay their employees, pay a very large proportion of the public taxes, pay their interest charges, and pay some dividends on stock. Is this the result of a miracle, or is it because American railroads are undercapitalized?

We have fallen into an unwarranted habit of assuming that a man who invests his money in the building of a railroad thereby gives up the right of gain enjoyed by everyone investing money in other enterprises. It seems strange that this should be so, because of the fundamental idea that all people should have equal rights and consideration before the law, and again, because it would seem that if any exceptions are to be made derogatory to the individual they should not be made against the man who is the pioneer of development and whose investments in the first place have more to do with the growth and progress of the country than those of any other class.

As an illustration of the extent to which railroads are undercapitalized we may consider investments, we will say, in the Northwest. Upon a date not very remote certain parties decided to build a railroad from the Mississippi River, through the territory of Minnesota and into that of Dakota, and they themselves, and others having confidence in the country's future, invested their money in that enterprise. At the same time other parties believed it would be found profitable to invest their money in lands adjacent to this railroad through Minnesota and Dakota. All of these parties acted on their judgment and invested accordingly. The land tributary to the road was worth at that time an average of \$5 per acre, although the value would have been much less except for the possibility of railroad transportation. It is now worth, country, towns, and cities, an average of \$100 per acre, and yields a return, speaking conservatively, of 6 per cent on that valuation, or 120 per cent per annum on the amount of the original investment. Twenty-five years later it will probably yield 200 per cent per annum on the original investment. We all know this and we are glad that it is so. It is an evidence of the wealth and greatness of the country and the opportunities had by its citizens for investment and increase in which we may properly take great pride and pleasure.

Money has been expended in improving the land and the railroad, probably about the same percentage of value in each case, as both have been intelligently and well cared for by the addition of improvements that could add to their value and utility. The greater proportion of the lands and of the securities of the railroad company have changed hands many times since the first transaction here related. Men have speculated in either or in both, some times at a profit and again at a loss. As a result of these speculations some have grown poor and others rich, but the value of the property is apart from these incidents happily, and the land yields 120 per cent yearly on the amount originally invested, while the railroad investment is very much less remunerative.

Must we not concede that the man who put his money in the railroad property in this territory at the same time has the like right to benefit by its prosperity and increase which his work and investment did more than all other things to promote? His enterprise was of much greater importance to the public and the country than that of the other parties and his investment had a much greater element of risk. Under general business rules, if the territory grew and prospered, his percentage of increase should be greater than that of any other class of investor, but let us at least admit that he must be allowed a percentage of advance equal to that of his more conservative neighbors.

The per cent of increase in values after the construction of railroads has varied in different sections of the country, but the example cited is in a general way typical.

We have the cheapest and the best railroad transportation in the world, and we pay our employees more money than is received by railroad employees elsewhere, because the builders of American railroads have either waived or have been denied

their rights to share in the general prosperity of the country and in the increased values that have benefited every other class of investors who were wise enough and had courage enough to create or produce a thing required for public comfort and convenience.

It is not possible that rates will be materially changed in the direction of advances, but if they had never fallen lower than 300 per cent of the present basis the railroads would still be the greatest and most important economy enjoyed by the American people. If they were five times the present figures the railroads would still be indispensable.

The general public misapprehension on the subject of railroad capitalization is, I think, occasioned to a great extent by the large number of very wealthy men who invest in railroad securities. Many great fortunes have been accumulated in the United States through speculations in railroad and other securities, through speculations in real estate, through speculations in merchandise, and through the successful prosecution of great manufacturing or trading enterprises, and the possessors of these fortunes have, to a considerable extent, invested their surplus gains in railroad securities. This probably gives rise to the carelessly formed opinion that the fortunes of these men have been accumulated from the profits of transportation.

It is not possible to point to one citizen who has accumulated even a moderate fortune as a result of the income received from railroad securities.

American investors in railroad securities are of two classes; the very rich who place their money in this way for handling by others and the less fortunate who invest their savings or small inheritance in the same way because either their age or sex prevents their entrance into active business pursuits that offer larger rewards.

Of those who claim that railroad rates are too high and railroad earnings excessive, not one can be induced to invest in railroad stocks and bonds, nor in the securities of other enterprises promising such meager returns.

Men of strength and ambitious of fortune know of better fields than this to till; of opportunities ready to the hand of every energetic citizen of the Republic to increase his capital many-fold.

Investments in railroads should be allowed to increase in value in proportion to the growth of other property in the same territory, and a schedule of rates can not be unreasonably high unless it yields revenue in excess of an amount necessary to give fair returns on this valuation.

Government control of railroad earnings should be limited to the protection of citizens against extortionate rates and discriminations.

The people of the United States enjoy the best and cheapest transportation in the world, and in fairness there can not be, and in fact there is little, if any, complaint that the rates are too high for the service performed. Shippers requesting reductions in rates ask for the change in order that they may be placed in a more favorable position for reaching certain specified territory as against the competition of another market or a competitive commodity. The only reason for dissatisfaction and the only basis for complaint is that established rates are unduly favorable to other markets or commodities (always other markets and commodities), or that there is a discrimination of rates in favor of individual shippers.

The first class of complaints is born generally of a desire for an adjustment that will add to the advantages of the complainant in his efforts to enlarge or extend his trade in territories served by competing markets or commodities. A petitioner usually admits that his purpose will be served if the rates charged his competitor can be advanced, but in practice the readjustment, when made, is reached through reduction in rates and a sacrifice of the carrier's revenue. There is, in fact, very little of this class of discrimination, because the carriers undertake to protect and promote the business of everyone they serve, and the requests from those interested in different markets and commodities are so considered together that rates are adjusted in a way that is fair to all. Understandingly considered, one of the strongest evidences of the soundness of the general rate adjustment is in the dissatisfaction of various markets caused by their inability to get a basis of rates that will permit them to eliminate competition. Because readjustments are almost uniformly reached through reductions in rates the carriers do not receive compensation in proportion to the service performed.

Discriminations in favor of individual shippers are also at the expense of the carriers. For this reason, and for the more important reason that they are against the best public policy and in violation of the common law, it is of the very first importance that they should be discontinued.

There seems to be a popular opinion that railroads favor rate discriminations and are opposed to legislation that will prevent them. Nothing could be more erroneous than this view. Railroad managers have expended more time and thought in efforts to prevent and discontinue rate discriminations than in any other field of railroad

management and their efforts have been very sincere and very earnest and oftentimes ineffectual.

The failure of their efforts has been partially due to the attitude of the shipping public, which as a whole condemns discrimination and individually undertakes to procure discriminative and unlawful rates. Almost every important shipper employs capable and busy men whose duty it is to procure special advantages in the way of rates applicable to the business of the employer and the esteem in which these men are held is dependent, as in other lines of work, upon the measure of success achieved.

However, the greatest difficulty encountered by railroad managers is unwise legislation that has not only defeated the purpose for which it was proposed, but has had other unexpected and lamentable results.

I have been for many years greatly interested in this subject and in a good position for observation, and it is my belief that the interstate-commerce act, with its anti-pooling clause, has done more to foster and build up, by discriminative rates, the enterprises which are generally known as trusts than any other one thing. The application of the Sherman antitrust law, which was probably not intended to refer to rate adjustments by railroads, has very ably and considerably assisted the interstate-commerce act in the accomplishment of this undesirable result, since it added to the difficulties of railroad managers in their efforts to prevent rate discriminations.

The insurmountable obstacles presented by these two laws to understandings and agreements essential to rate maintenance, combined with the necessity for such rate maintenance, gave impetus to the movement for railway mergers and consolidations.

The anti-pooling clause of the interstate-commerce act and the application of the Sherman antitrust law to rate agreements were together a clear notice to railroad owners that if they desired to comply with the common law prohibiting rate discriminations and with its reiteration by the interstate-commerce act they had open to them but one effectual method and that was through consolidation.

Railroad mergers are not so dangerous to the public welfare as the great industrial combinations, because of the common law regulation of rates, which law does not control industrial monopolies and the price at which their product shall be sold; but both classes of combinations excite the apprehension and opposition of the public and it is unfortunate that the people's representatives should have enacted laws to promote the conditions that are the subject of so much complaint and uneasiness.

The best aid as yet discovered to efforts for the maintenance of rates and the application of the same rates to the business of all parties is the exercise of the pooling privilege. The interstate-commerce act prohibits discriminative rates in one section and in another denies the right to use the only remedy that had ever been found really effective against the evil. Such legislative error can only be accounted for on the theory that the law was enacted without proper consideration, without correct information, and without full knowledge of the peculiar and intricate character of the subject.

Every citizen who understands the situation and is sincerely concerned in the public welfare should oppose further railroad legislation, except that which has been very carefully considered and passed upon by men who understand from experience and observation what is likely to follow as a result of laws that are proposed for enactment.

For many years the railroad companies have maintained organizations known as traffic associations for the purpose of fairly and equitably adjusting the rates as between markets and commodities and adopting such means as they found most effectual for the maintenance and uniform application of those rates. They were greatly assisted in this latter work by the privilege of pooling until the passage of the interstate-commerce act. That law seemed to have almost the immediate effect of placing the rates in the hands of a few of the larger shippers who were in position to financially embarrass certain of the railroad lines unless they were willing to disregard the law and enter into private arrangements for rebating. These understandings were especially pernicious and of far-reaching effect, because they were made with only a limited number of people, in order to minimize the chances of detection and naturally with those controlling the largest amount of business.

After a discouraging experience with the problem of rate maintenance under these conditions the provisions with regard to pooling were to some extent evaded, it might be said, in deference to that feature of the interstate-commerce law and the common law prohibiting rate discriminations. Some of the most dictatorial rate demoralizers among shippers were curbed and put out of authority by quiet physical divisions of the traffic between the various interested carriers. This situation was difficult and unsatisfactory to the railroads, but it was an improvement over the conditions apparently fixed by the interstate-commerce law.

Then came what is known as the trans-Missouri decision, under the Sherman anti-trust act, its effect being to disrupt or destroy the usefulness of the traffic associations maintained by the railroad companies, because that decision practically held that it was unlawful to assemble for the purpose of discussing or putting into effect by agreement regulations having for their purpose a compliance with the law that requires fair and reasonable rates and prohibits discrimination as between shippers. Since that time railroad managers have been unable to think of any way in which they could afford to the public fair, reasonable, equitable, and uniform rates, except through consolidations.

Various members of the Interstate Commerce Commission have at different times admitted that the antipooling clause was a great stumbling block in the way of uniform rates, and I assume that this provision might have been repealed some years ago but for the reason that some members of the Commission have desired to make this admitted improvement in the law dependent upon the granting of the rate-making power to their body.

When the interstate-commerce law became effective I was railroading in the South. The honor of inserting the antipooling clause in the interstate commerce act was claimed by Senator Reagan, of Texas, and that distinction was accorded to him by the people of the Southern States. After the enactment of the interstate-commerce law Senator Reagan was so impressed with his unusual capacity for railroad regulation that he quitted the Senate to become chairman of the first railroad commission in the State of Texas, and because he was honest and unusually intelligent and painstaking he made as good a chairman as has presided over that body. Owing to his activity he started in to make a good many mistakes in the first year of his administration. He undertook at once to readjust all of the important rate schedules in the State and was astonished when shippers went to the capital to protest against some of his proposed schedules and to ask for the retention of those established by the railroads. He was again surprised when the Federal court granted the petition of a railroad security holder for an injunction restraining the carriers from making effective the commissioners' tariffs. Presently he grew in wisdom and was big enough and broad enough and honest enough to hear what the public had to say and what the railroad representatives had to present and to revise his ideas of rate making with the acquirement of real information. After enough experience to gain some actual knowledge of the transportation problem he had the courage to state openly, in writing as well as verbally, that the antipooling clause was a mistake in legislative acts for the government of carriers and that the pooling privilege was necessary to obtain the desired results. When we consider the experience Senator Reagan had to acquire before he reached a valuable conclusion on this subject it is not strange that members of Congress have been in need of additional light.

I do not mean to convey the idea that to legalize pooling will immediately stop rate cutting, because if we had the privilege it would be a difficult task to form the pools and agree upon divisions of business under them. The privilege of pooling would enable the railroads, within a reasonable time, to discontinue many of the worst abuses from which the public suffers, by shutting off special arrangements with the heavier shippers, which would materially and directly tend to the steadying of the whole rate situation. This general steadying of rates would follow for the reason that when a great shipping company throws its entire business over one line, because of discriminative arrangements which it has been able to perfect, competing lines seek other traffic to take the place of that which has been lost and this results in further and finally in general demoralization. While I think this reasoning is logical I want to state, for your information, that my conclusion is the result of actual experience and observation.

Only a minor percentage of the total business of the country would be covered by pooling arrangements in any event, because the operation of a pool is attended with much labor and some expense to the railroads and if the privilege of pooling were restored it would only be availed of so far as might be necessary to insure uniform application of the tariff rates. The privilege of pooling is of no value to carriers except for the prevention of rate discriminations and demoralizations.

From the view point of a citizen I believe the proposition to give the rate-making power to the Interstate Commerce Commission is the most vicious piece of legislation that has been suggested in recent years. As a railroad man I know that the Commissioners' efforts would necessarily result in mistakes, against which the public should be protected. That these mistakes would be directly expensive to the railroads is likely; that the carriers would indirectly suffer through the injustice to shippers and the upsetting of business conditions is inevitable, because the interests of the railroads and the public, properly considered, are identical.

It is not necessary to take a railroad view in order to condemn the proposition to pass the rate-making power into the hands of men who are insufficiently prepared

for the work. I think it will be conceded that transportation in the United States is the greatest of all business problems. Many capable men have spent the better part of their lives in its study, and it would probably be impossible to select from their number six men who could properly do the work which the Commissioners desire to take upon themselves. The desire itself is born of a lack of knowledge so notable as to demonstrate the Commission's peculiar unfitness for the task.

It is not likely that rates in this country will ever show any material advance over the present figures. This would be true even if there was no restraint upon the railroad companies in making their rate adjustments, not even that of the common law. There would be changes in rates; some would be in the direction of advances and some in the way of reductions, and changes in both directions would be based upon fairly intelligent consideration of conditions well understood. In truth men do not make rates and men should not make rates. Every proper rate adjustment is born of conditions. The closest students of conditions are the men in charge of traffic on the various railroads in different sections of the country. The rates which they publish are a result of this study of conditions and are the expression of what those conditions are found to be and to require.

The power of rate making is not safe in the hands of any man or any body of men not in daily and hourly touch with the actual flow of business and with a full knowledge resulting from actual observation of what is necessary to protect and to stimulate the interests of every producer and trader.

No class of men have so great a fund of information about business and manufacturing of every kind, in every community and section, as that possessed by the traffic managers of American railroads. The public and every industry in the country benefits constantly from this unusual knowledge of its needs, and it should continue to do so. When there is a conference of these men through the medium of traffic associations or otherwise, there is at hand an amount and variety of information covering almost in detail every business enterprise in the country and the rate adjustments made represent the application of such intelligence as there is in the body to the full information at its command. We need not wonder, therefore, that rates based upon so complete a knowledge of conditions are seldom complained of by those who understand them and are really interested in their effect. If anyone stops to consider the number of tariffs in existence, it is remarkable that so little fault should be found with them by the people served. Complaints are rare and receive prompt consideration, and where there are no amendments a correct analysis of these complaints will generally discover that they are made by shippers desiring to obtain an unfair advantage of competitors in another market or over a commodity that is in competition with their own product.

We have only to go back a few years to find the average freight rate in the United States double what it is to-day, and almost all of this reduction has been voluntary on the part of the carriers, in deference to conditions which, as previously stated, are and should continue to be the controlling factor in the making of rates.

We may reasonably doubt the possibility of getting on the Interstate Commerce Commission men of greater intelligence than those engaged in railroad work and we can not hope to get a percentage of wisdom so much greater as to compensate for the lack of knowledge as compared with that which comes from being in daily and hourly touch with the actual business of the country and its movement. So long as the rate-making power remains with the railroads, every community, every commodity, and every person is accurately and intelligently represented in conferences that determine the public's business requirements.

It would be unwise to substitute for this arrangement one that would place the rate-making power in unpracticed hands, with men who perhaps have local prejudices that can not be properly counterbalanced, and possibly ambitions beyond or apart from the dealing out of precise justice to this or that community, or to this or that commodity.

It may be inquired why it is that so many commercial bodies and so many railroad men favor giving the rate-making power to the Interstate Commerce Commission. Possibly it might be a sufficient answer, of the Yankee order, to inquire in turn why so many people wanted the interstate-commerce law in its original form, but the question is entitled to some other response. So far as I can ascertain, the railroad men who favor this proposition are influenced by a feeling that it is impossible to get the legislation that should be had unless they make a trade with the Commission. They know that it is a vicious movement to give the Commission rate-making power, but they believe that body will not be willing to afford the relief which the public and the carriers require with regard to rate maintenance, unless they can get something in the way of personal and official aggrandizement. I have never agreed with this view and am still of the opinion that we may hope for intelligent legislation, and that it is a mistake to knowingly compromise with so serious an evil.

As for the public expression, it sometimes happens that noise and opinion are not precisely in accord, and then again, there is a good deal of opinion that is not the product of careful thought. To illustrate: The chairman of the transportation committee of one of the most important commercial organizations in the country told me that after having a call from a man who is cooperating with others to secure rate-making power for the Commission, his committee had recommended a resolution approving what is known as the Cooper bill. This man is possessed of unusual ability, has varied business interests, and has made a marked success of every one. I asked him why they thought well of the proposed legislation. He said they realized there was some danger in giving the Commission rate-making power, but they approved it in order that through the exercise of that power they might put an end to rate discrimination. I then asked him what the establishment of rates had to do with their maintenance. After a brief consideration he said that it had nothing to do with it, but that he had always thought it had until forced to do a little thinking through this simple inquiry. He is one of the directors of the organization, and when the recommendation came before that body he made some suggestions that resulted in a little thinking there and the action was not approved; and so it is that the Cooper bill failed of indorsement by that body.

It seems curious that men of such capacity, and so greatly interested in freight rates, should not understand, without having their attention called to it, that there is positively no relation between the establishment of a rate and its maintenance, but when you see that men of this caliber have not thought upon the subject enough to reach a right conclusion, it is not surprising to know that the public generally has been misled.

Some of those who have interested themselves in the movement to get rate-making power for the Commission have handled the campaign very effectively. They have met every cry of unrest from the public on account of rate discriminations with the response that the Commission is anxious to improve these conditions, but can do so only when they are granted the power of making rates. Whether these advocates know so little as to believe this, or whether they are deliberately undertaking to mislead the people, is a thing for them to answer.

I believe it is conservative to say that more than 95 per cent of the people who have an opinion on the subject believe that rate making and rate maintenance are practically the same thing.

If the Commission's power to make rates began to-morrow the present tariffs of the railroad companies would be made the tariffs of the Commission, and other rates the Commission might substitute from time to time could be deviated from with the same facility as those now in effect. Special and discriminative arrangements with favored shippers would continue, because nothing had been done, or even attempted, to disturb conditions in that respect.

The Commission could not use the rate-making power as a lever to bring about rate maintenance unless they used it as a club and undertook to punish the railroad which they believed to be guilty by a reduction in their rates. What effect this would have upon the railroad attacked is problematical, as its traffic might be sufficiently increased to compensate for lower rates. It would prostrate the revenue of all competing properties, and it would destroy all business interests in competition with those on the line under punishment, either as to markets or commodities. Unless it is expected that the Commission will pursue this impossible course, it can not be claimed that the power to make rates will affect their efficiency in bringing about their maintenance.

We are forced to the conclusion, therefore, that any legislation on the theory that to give the rate-making power to the Commission is to affect the question of rate maintenance will be legislation based upon pure error.

In the application of railroad rates in the United States there is one great evil that should be corrected, and that is the evil of rate discrimination in favor of particular shippers or combinations. Consciously or unconsciously those who are endeavoring to turn legislation in the direction of rate-making power for the Commission, ignore the real vital question and become the efficient agents of those who profit through the inequalities that are the only cause for complaint.

The interstate-commerce law, as originally enacted, had in it a penal clause that provided for the imprisonment of employees who contracted for rates at variance with the published tariffs, and it was found difficult to successfully prosecute offenders. The provision was offensive to American sense of justice and decency. There was a noble prejudice against the punishment of children for the sins of their parents. It was impossible to find jurors who believed that a subordinate acting under instructions should suffer imprisonment for an offense by which he did not profit, while the really interested parties were allowed to escape prosecution and punishment.

After the passage of the Elkins law there was a very great improvement in the rate situation, because shippers as well as railroad men were of the opinion that convictions could readily be obtained under that law, as it placed the penalties upon the parties actually profiting through rate discriminations. This better condition has not steadily continued, because the belief has gradually grown among shippers and others concerned that there is to be no serious effort to bring about the maintenance of rates under the provisions of the Elkins law.

My experience and observation warrant the conclusion that the common-law prohibition of unjust, unreasonable, and discriminative rates, in connection with competition of markets and commodities, would insure to the public just and reasonable rates, and that the repeal of the interstate-commerce act and amendment of the Sherman antitrust act, so that it would not interfere with consultations and agreements to that end, would bring about the maintenance of rates and their uniform application to the business of all shippers.

I realize, however, that there is an amount of misunderstanding, misapprehension, and prejudice that makes such legislation improbable, and that there is a strong sentiment demanding that some Government tribunal other than the existing courts shall at least have special and particular jurisdiction over the question of final rate adjustments if pooling is allowed. I believe that departure from the common law, which is broad enough to insure the rights of every citizen, and the enactment of special or class laws that deprive some interests of the protection their property would receive under the common law is mischievous and directly harmful to everyone in legitimate business, as in the case of previous so-called railroad legislation; but if there must be an additional tribunal I think its members should be appointed for life, and that it should be made up of able lawyers and experienced railroad men. The carriers should be the makers of rates, and this court should hear and decide the merit of complaints, allowing interested parties or communities to intervene and be heard. If rates are made by any carrier giving undue advantage to any market or community, it should be the duty of this court, upon so determining, on complaint of any shipper or carrier, to require that such rates be advanced or restored. Public anxiety as to the effects of pooling should be removed by a provision that carriers can not advance a rate on business covered by pooling arrangements except with the consent of this court.

I am of the opinion not only that a large proportion of this court should be trained traffic men, but further, that all of its members should, on every opportunity attend traffic association meetings, to the end that they may continue in close touch with transportation affairs and with the public demands and needs in connection therewith.

The railroad companies should be given a free hand in their efforts to bring about uniform rates and should have the cooperation of the Government and of the Commission if it is reorganized, so that it will give attention to the duty of preventing discriminations.

It is dishonest, and therefore immoral, to allow the Commission to establish and make effective rates which the courts may afterwards hold to be unjust; it is the taking of property without due process of law, without regard to equity or justice.

We have lately heard much of political creeds that threaten established rights of those who have, through labor and self-denial or otherwise, lawfully accumulated property, great or small. There are men who urge that these accumulations shall be shared equally by those who have created and saved with those who have remained idle or wasted their gains, but I do not think the wildest of these propagandas contemplate placing the owner of property at a special disadvantage in such redistribution.

We are not ready for legislation that will give those without the interest of invested labor or capital jurisdiction of the property of others, and that to the extent of saying that the rights of the lawful owners shall be the last to be considered.

The common law should protect, and does protect, every citizen against abuse, and we can not have regulations that will permit one who thinks himself abused to take the property of another, leaving the owner the poor privilege of regaining it by expensive litigation, if he can. We should have property titles conveying something better than the right to fight for partial recovery of our own.

I am sure that the public does not seriously desire a dishonorable administration of its affairs, and that the plea for rate-making power in the hands of the Commission should be rejected on the score of common honesty, even if there were not other valid reasons.

Aside from the added cost of transportation to the public, the one great objection to the Government purchasing and operating the railroads is because of the probability that such ownership would result in the downfall of the Republic, but the evil

consequences of Government tyranny without responsibility, are even more inevitable.

A government can not honorably undertake to fix the revenue of its citizens and their enterprises without obligating itself for their liabilities. So important a principle is involved here that no good citizen should find it difficult to cease, during its consideration, to be either a railroad or an antirailroad man.

The carriers have survived some injustice, and they may be able to survive still more, but no government is strong enough to escape penalty for dishonorable conduct in dealing with its citizens.

"What will you have? Quoth God. Pay for it and take it." The Government, the people, and the individual are alike subject to the inexorable law of compensation.

I would not urge delay in legislation for the sake of delay; the railroads are quite as much in need of additional legislation as is the public, but unless Congress is in position to recognize fundamental truths, and act simply and candidly by repealing legislation that has been found to be abortive and injurious to all interests, then there should be no legislation whatever until so much time is taken as may be necessary to frame laws that will effectually provide the best way to eliminate the present discriminations and inequalities, and insure justice to all parties. It is not important that these new laws shall be in accord with the views of those urging the power of rate making for the Interstate Commerce Commission, nor with the desire of some of the railroad officials and financiers interested in railroad properties, but they must be honest and equitable.

There is a clamor about this legislation from all sides, and everyone wants peace, but it must be the "peace of justice."

I not only believe that practical railroad men should be asked to assist in the framing of new laws on the subject of transportation, but think that after an understanding is reached as to what those laws should be, the committee in charge should seek criticism from all sides, not only in the form of speeches before the committee, but in a quiet informal discussion of measures proposed with those well informed but not equipped for making speeches. The final draft of the act should be submitted to expert traffic men for opinion as to its actual practical meaning and effect.

Legislation to govern transportation rates should cover water transportation so far as the former is properly subject to Government control. The river boat lines, after the interstate-commerce law was enacted, proceeded to make demands on the railroads even more promptly than the large shippers, and, I assume, continue to do so, although I have not in recent years been in a territory where river transportation is a factor in the local situation. The Government provides and maintains the roadway and right of way for boats, competing with roads built and maintained with the private capital of its citizens, and permits them to be guilty of any amount of discrimination and extortion which they may desire to practice. After the interstate-commerce act became a law many of these river-boat owners went to the railroad companies and pointed out that they had an advantage which they intended to avail themselves of, unless they were paid not to disturb the revenue of the railroad companies. I do not know why these transportation companies are excepted from Government supervision, but it appears that there is much more reason why the Government should exercise jurisdiction over the making of their rates than over the business of carriers that construct and maintain their own properties.

Whatever legislation we may have in the near future, the burden of serving and satisfying the public with transportation will remain with the railroads, and the owners of railroads will continue to have more direct interest than any others in what may build up the wealth and promote the progress of the country, on account of the magnitude of their investments, returns upon which are determined by the measure of general prosperity. It is to be hoped that our lawmakers will remember this, and also that the question they have under consideration is a very practical one, and that it must be considered in a common sense, matter-of-fact way, and not with relation to any clamor, because such clamor may be ill directed and may not even represent so much as the difference in the numerical strength of the people who own railroads and the people who do not.

No other class of citizens is so deeply concerned in the problem of eliminating discriminative rates as the owners of the railroads, who supply all the money involved in the operation of this pernicious practice, and suffer with all other citizens from everything detrimental to the real business interests of the country. It should be evident to our representatives also that no one does or can understand the situation and its difficulties so well as the railway officials. What they have to say on the subject, like that which may be said by others, is entitled no more consideration finally than its wisdom merits, but every sincere and thoughtful person will desire to hear from men of experience, and particularly from those especially concerned in the elimination of the abuses which our legislators want to see discontinued.

With a little plain, unprejudiced thought every intelligent man can see that the railroad owners and operator's anxiety to discontinue rate discriminations does and must far surpass that of any other person or class of persons, and the use of plain common sense will suggest that the Government should cooperate with these people in the elimination of the evil under treatment. Even those who believe in what is called restrictive railroad legislation should be sufficiently calm and thoughtful to know that there ought not to be anything to restrict the railroad companies in their effort to obey the common law and to provide the public with uniform as well as reasonable rates. If members of Congress will bear in mind these simple and self-evident truths, all the people, including every class, will profit by their action.

If we have legislation that is not based upon existing conditions, and our requirements well understood, then we must expect every business interest, including railroads, to suffer further loss, inconvenience, and injustice.

I realize that some of my suggestions as to legislation may at once appear deficient to you because of my lack of legal knowledge, but free and informal discussion should develop legal difficulties, when perhaps other suggestions can be made that will fit the legal requirements and at the same time accomplish correct results. In any event, the principles of right and justice to all ought to be kept closely enough in mind to prevent unjust and unwise legislation.

I believe this is the longest letter I have ever written, and at the same time it is so brief as compared with the magnitude and importance of its subject that it is very incomplete and I am afraid it will not be of very much use to you.

Yours, truly,

L. F. DAY.

Mr. George B. Robbins, president of the Armour Car Lines Company, and A. R. Urion, esq., attorney of the Armour Car Lines Company, in their testimony stated that they would file with the committee supplementary statements containing the additional facts, and especially statistics requested by the committee in its hearings. These statements have not been received at the date of printing the testimony.

AMENDING THE INTERSTATE-COMMERCE ACT.

JANUARY 31, 1905.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. TOWNSEND, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 18588.]

The Committee on Interstate and Foreign Commerce, to whom was referred sundry bills to supplement and amend the act entitled "An act to regulate commerce," approved February 4, 1887, having had the same under consideration, beg leave to report as follows:

The committee has had under consideration the following bills: H. R. 10481, H. R. 6273, H. R. 6768, H. R. 7640, H. R. 11434, H. R. 11394, H. R. 13778, H. R. 12767, H. R. 16301, H. R. 16977, H. R. 17099, H. R. 17578, H. R. 17650, H. R. 17867, H. R. 17786, H. R. 17783, H. R. 17781, H. R. 14831, H. R. 18127, H. R. 18286, H. R. 18423, H. R. 18466, H. R. 18043, all having for their object an amendment to the interstate-commerce act giving increased powers to the Commission provided for in said act, and all claiming to provide for an expeditious determination of the orders or rulings of said Commission and for a judicial review thereof.

The subject-matter of this bill is not new. Legislation along the above lines has been attempted in prior Congresses. During the Fifty-seventh Congress elaborate hearings extending over a period of six weeks were had before this committee, and the testimony of numerous shippers, manufacturers, and persons engaged in transportation, as well as officials of the great railroad systems of the country was taken. During the present Congress this legislation was again presented through bills above mentioned, and again the opportunity was afforded to all parties interested to present testimony. Numerous parties have taken advantage of the opportunity, and the time of the committee has been almost entirely devoted to hearings on and considerations of this subject since December last. A large amount of testimony has been taken and printed for the benefit of the committee and the Congress.

The importance of this legislation was indicated by the President in his last annual message, wherein he used the following language:

The Government must in increasing degree supervise and regulate the workings of

the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. The most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to go at once into effect and stay in effect unless and until the court of review reverses it.

Prior to 1897 the Interstate Commerce Commission assumed to exercise the power to regulate rates; but by a decision of the Supreme Court of that year in the maximum rate cases the court determined that the interstate-commerce act did not give to the Commission such power. Since that decision the Commission has repeatedly recommended to Congress an amendment of the act to give it such power. In its last annual report it uses the following language:

In that branch of regulation which pertains to the correction of established rates and charges, there has been no amendatory legislation conferring power over the rate and making orders of the Commission effective, although we have discussed at length in previous reports the weakness and inadequacy of the law, as from time to time defects have been disclosed under construction of its provisions by the courts, and have explained in detail the reasons for our urgent recommendations.

The Commission may find after careful and often extended investigation that a rate complained against is unreasonable and order the carrier to desist from charging that rate for the future, but it can not, though the evidence may and usually does indicate it, find and order the reasonable rate to be substituted for that which has been found to be unlawful. It results that any reduction of the wrongful charge amounts to technical compliance, and frees the carrier from any legal obligation under the order. The Commission can issue its order only against the rate complained of; it can condemn the wrong, but it can not prescribe the remedy.

This is illustrated by two cases decided during the present year. A rate of \$80 per car on peaches from New York to Boston, used as part of the through charge from Georgia, having been found unreasonable, a reduction of \$50 was deemed reasonable by the Commission and recommended. The carrier reduced the charge to \$65 per car. A rate of \$1.90 per ton on coal from Indian Territory to a point in Texas was declared excessive by the Commission, and a rate of \$1.25 was recommended as reasonable upon the facts shown in the case. The rate was reduced to \$1.50 per ton. The proof in each of these cases demanded, in our opinion, reductions to the extent recommended, but the carriers thought otherwise, and being under no compulsion to follow our recommendations they put in much higher charges.

These carriers could have refrained altogether from taking any action under the orders issued in the cases mentioned. They could, in the present condition of the law, have stood upon their legal right to await the direction of the circuit court upon a petition by the Commission and another trial of the issues in that court. In cases involving important rates the carriers often do take advantage of that right. The more important the case may be, the greater the benefit conferred upon shippers or communities, the less likely is the order of the Commission to be obeyed. The Commission must not only render a just decision, but one that is convincing to the carrier in order to afford the relief from unlawful rates which is contemplated in the statute. If the carrier is not so convinced it merely ignores the order, and the time involved in enforcing the same generally covers a period of years, which amounts in most cases to a denial of justice.

If a decision by the Commission is right the public is entitled to have it go into effect. If it is wrong—if it would deprive the carrier of property without due process of law or invade any of its other rights or privileges under the Constitution or laws of the United States—its operation could be enjoined, upon showing to that effect by the carrier in a suitable and summary proceeding in the Federal court. The amendments to the statute recommended by the Commission involve no fixing of whole tariffs of rates in the first instance or at any time, but simply the redressing of transportation wrongs shown to exist after full investigation, during which all affected interests have been heard, and when an order is issued against a carrier under such procedure it should, by operation of law, become effective upon the date therein specified.

In the fixing of rates upon all commodities for carriage in all directions and between all points reached by railroads it is inevitable that much injustice, unfairness, unreasonableness, preference, and discrimination will be practiced notwithstanding the greatest care and ripest judgment may be exercised by the railway officials charged with the duty of rate making. These errors of judgment on the part of railway offi-

cials, many of them occurring in the hasty exercise of the rate-making function or in the effort to press on to the discharge of other urgent duties, constitute the reason for Federal regulation and the basis of the present widespread demand for an amendment to the existing statute which will enable their speedy correction when the results of such errors are felt by the commercial public.

It seems appropriate to allude to what seems to us persistent misrepresentation on the part of many who are interested in opposing this legislation that the amendments desired would confer upon this Commission the power to arbitrarily initiate or make rates for the railways, and that it would be most dangerous to place this vast authority in the hands of five men, especially five men who have had no experience as railway traffic managers. No such power has been asked by or is seriously sought to be conferred upon the Commission. Though the popular demand may eventually take that form under the stress of continued delay in remedying ascertained defects in the present plan of regulation, the amendment heretofore and now recommended by the Commission, as to authority to prescribe the reasonable rate upon complaint and after hearing, would confer in substance the same power that was actually exercised by the Commission from the date of its organization up to May, 1897, when the United States Supreme Court held that such power was not expressed in the statute.

What the Commission could do if the authority so denied should be definitely conferred by the Congress is this: After service of complaint upon the carrier or carriers, after full hearing of each carrier and shipper interested, and after careful investigation a report and opinion would be rendered, and if the decision should be against the carrier an order would be entered directing it to cease and desist from charging the rate complained of and to substitute therefore a rate found, upon the evidence before the Commission, to be reasonable and just. This procedure is essentially judicial in character and form and bears no resemblance in any degree to the arbitrary administrative action which would result under the authority to make tariffs of rates absolutely for the railways, either in the first instance or after some form of hearing or investigation.

We said in our reports to Congress for 1902 and 1903 and now repeat that in view of the rapid disappearance of railway competition and the maintenance of rates established by combination, attended as they are by substantial advances in the charges on many articles of household necessity, the Commission regards this matter as increasingly grave, and desires to emphasize its conviction that the safeguards required for the protection of the public will not be provided until the regulating statute is thoroughly revised.

The complaints which come before the Commission and which are discussed under another heading show that the grievances alleged reach from matters of trivial consequence to those which involve very large sums during the course of a year's business, and that the effect is not always confined to the mere amount of a given reduction from a published rate, but frequently extends to the ability to carry on trade in great lines of business. Though the law is extremely defective, aggrieved shippers have no other recourse than to appeal to the Commission, in the hope, as was said in our last report, "of some relief from conditions which they regard as intolerable."

No procedure for reparation or damages resulting from unjust rates can ever afford an adequate remedy. This is so because, first, in respect of many articles of freight the rate is an important factor in determining the cost thereof and in fixing the limits of distribution and sale. The mere difference between the just rate and the unjust one on actual shipments would seldom, if ever, approximate the real damage to a business injuriously affected. Generally the most serious injury in such a case, though potent and substantial, is not even approximately measurable. In the second place, the shipper, who alone is known to the carrier in the transaction, is often a dealer or middleman who has protected himself in buying and selling on the basis of the rates charged, yet he alone could maintain a suit against the carrier on account of the unjust rate paid, although the hardship had fallen on the producer from whom he bought or the consumer to whom he sold, or both. In the very nature of the case adequate protection can be found alone in prevention of the wrong; hence, the vital importance of just rates upon which to move traffic at the time when or before it moves.

This is also true in respect of tariff rates, however strictly enforced, which operate with discriminating effect as between rival localities or competing articles of traffic. The resulting disadvantage in such cases is not measured by the difference between relatively equal and relatively unequal rates, but by the command of markets and the ability to undersell which are secured by those who are favored by inequitable rate adjustments. The injury thus inflicted is beyond calculation and can be redressed only by the exercise of sufficient authority to readjust rate schedules to be observed in the future on the basis of relative justice.

It is conceded by all that it is right that rates should be reasonable and just. It is clear that when they are not so there is now no adequate means of making them such unless the carrier at fault can be convinced and persuaded to do so. The interests of one party can not be safely relied upon to determine and protect the rights of another. It must surely be possible to devise a method of procedure whereby practical effect can be given to the concededly fair demands of law that rates shall be reasonable and just without sacrifice of the rights or just interests of either party to the controversy.

If authority is to be conferred upon any tribunal, upon complaint and hearing, to correct rates found to be unreasonable or unjust, there is good reason for apprehension that the purpose to do so could in many cases be thwarted unless there is also authority to require the establishment of joint through rates over connecting and continuous lines and to fix the divisions thereof in case the carriers fail or refuse to do so.

As showing the widespread interest in this legislation there has been filed with the committee thousands of petitions, resolutions, and telegrams from private individuals, corporations, and civic bodies demanding that legislation along the lines suggested by the President's message and the above report of the Interstate Commerce Commission be enacted. Resolutions and memorials adopted by several of the States have also been presented.

To meet this great demand your committee has recommended the enactment of this bill, its chief purpose being to increase the efficiency of the interstate-commerce law.

The business interests of the country demand that the law be amended, and the railroad representatives at the committee hearings acknowledged that Congress should regulate the railroads, but it has been a difficult matter to get witnesses to agree on just what amendments should be made to the law. Your committee, however, believe that the great demands of the people are: First, that the Interstate Commerce Commission shall be vested with power to determine after full hearing not only what is an unjust and unreasonable rate, regulation, or practice, but at the same time to determine and declare what is just and reasonable, and that such determination shall become operative as soon as practicable, and second, that lawful means shall be provided to expedite the business of the Commission and speed its findings and orders to a final determination by judicial review. To these ends this bill has been framed and reported.

Section 1 of the bill confers upon the Commission the right to name a just and reasonable rate in place of one found to be unjust and unreasonable, and provides that the same shall take effect and become operative within thirty days from the date of service of the Commission's order upon the party directly affected by it. No provision is made for the suspension of said rate except upon reversal of the Commission's order by the court of review.

Section 4 provides for a penalty of \$5,000 to be imposed upon the party refusing to obey the order of the Commission for every day of such refusal after the order becomes operative.

To increase the efficiency of the Commission it is enlarged to seven members and the salaries increased to \$10,000. The work of the Commission is so great that five men have failed to perform it in a reasonable time, and many cases suffer for lack of time and opportunity to be heard and determined. The Commissioners' duties are so arduous and of such importance that the present salary of \$7,500 is believed to be insufficient, and is therefore increased to \$10,000. Men who are fitted for the great duties of Commissioners under the law as hereby

amended can command the higher salary, and none but men of very highest ability and experience should be selected.

Section 7 provides for a special court of transportation to review the orders of the Commission in case of appeals. It is believed that cases will be greatly expedited, and that a court constituted as provided in the bill will become expert in matters of interstate commerce, and that a greater degree of uniformity and continuity will be found in its decisions than in those of a court of less expert experience.

The Department of Justice reports that four additional circuit judges are needed for the regular business of the circuits. It is thought that the proposed court of transportation will not be occupied all the time with interstate commerce cases and that it will therefore have time to perform the extra duties required in the Federal circuits.

This court is composed of circuit judges designated by the President for terms of five years, with the exception of four of the first judges appointed, whose terms are respectively one, two, three, four, and five years. So constituted the court has at all times four members who have had one or more years' experience on the bench.

The other sections of the bill are for the purpose of making the act more complete and effective.

Your committee recommends the passage of the bill H. R. 18588.

Bill H. R. 18588 is as follows:

A BILL to supplement and amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever upon complaint duly made under section thirteen of the Act to regulate commerce the Interstate Commerce Commission shall, after full hearing, make any finding or ruling, declaring any existing rate for the transportation of persons or property, or any regulation or practice whatsoever affecting the transportation of persons or property to be unreasonable or unjustly discriminatory, the Commission shall have power, and it shall be its duty to declare and order what shall be a just and reasonable rate, practice, or regulation to be charged, imposed, or followed in the future in place of that found to be unreasonable or unjustly discriminatory, and the order of the Commission shall, of its own force, take effect and become operative thirty days after notice thereof has been given to the person or persons directly affected thereby; but at any time within sixty days from date of such notice any person or persons directly affected by the order of the Commission, and deeming it to be contrary to law, may institute proceedings in the court of transportation sitting as a court of equity, to have it reviewed and its lawfulness, justness, or reasonableness inquired into and determined.

Sec. 2. That when the rate substituted by the Commission as hereinbefore provided shall be a joint rate, and the carriers, parties thereto, fail to agree upon the apportionment thereof among themselves within twenty days after notice of such order, the Commission may, after a full hearing, issue a supplemental order declaring the portion of such joint rate to be received by each carrier party thereto, which shall take effect of its own force as part of the original order. Such supplemental order shall be subject to review by the court of transportation within the time and in the manner hereinbefore provided for the review of original orders of the Commission: *Provided*, That any rate, whether single or joint, which may be fixed by the Commission under the provisions of this Act shall for all purposes be deemed the published rate of such carrier, and subject to the provisions of an Act entitled, "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three.

Sec. 3. That in every such proceeding for review the petitions and answers filed with the Commission and the Commission's findings, opinions, and order, together with the evidence introduced in the hearing before the Commission shall be deemed a part of the record of the cause in the court of transportation, and said record shall by the Commission be filed with the court of transportation within ten days after notice for such review is given.

That in all such proceedings for review the defense shall be conducted under the

direction of the Attorney-General, but the Commission, with the approval of the Attorney-General, may employ special counsel to be paid from its own appropriation.

That the Commission may at any time, whether before, or on notice to the court, during the progress of a judicial review of its action by the court of transportation, reopen its proceedings in any case and modify, suspend, or annul its former order, ruling, or requirement.

Sec. 4. That if any party bound thereby shall at any time while it is in effect refuse or neglect to obey or perform any order of the Commission mentioned in sections one and two of this Act the Commission may apply by petition to the court of transportation to enforce obedience to its order by writ of injunction or other appropriate process, and in addition thereto the offending party shall, for each day of the continuance of such refusal or neglect from the time such order shall have become operative, be subject to a penalty of five thousand dollars, which, together with costs of suit, shall be recoverable by the Commission for the use of the United States in an action of debt in the court of transportation.

Sec. 5. That the word "person" or "persons" wherever used in this Act shall be deemed to include corporations.

Sec. 6. That the Interstate Commerce Commission is hereby increased to seven members, and the salary of each shall be ten thousand dollars per annum. The President shall appoint, by and with the advice and consent of the Senate, two additional Interstate Commerce Commissioners. Not more than four Commissioners shall be appointed from the same political party.

Sec. 7. That there is hereby established a court of record with full jurisdiction in law and equity, to be called the court of transportation, which shall be composed of five circuit judges of the United States, no two of whom shall be from the same circuit, and three of whom shall constitute a quorum, who shall be designated by the President for terms of one, two, three, four, and five years, respectively, from April first, nineteen hundred and five, and as their terms expire the President shall from the circuit judges appoint their successors for terms of five years each.

Sec. 8. That the court of transportation shall hold four regular sessions each year at the city of Washington, beginning on the first Tuesday in March, June, September, and December, and a quorum of said judges may appoint special sessions of the court to be held at other places when justice would thereby be promoted: *Provided*, That if the business of said court of transportation will permit, the judges, or any number of them, may be assigned to duty in the various circuits as now provided by law, but under no circumstances shall such assignment interfere with the necessary and expeditious performance of the duties of said court of transportation.

Sec. 9. That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, five additional circuit judges, no two of whom shall be from the same judicial circuit, who shall receive the pay and emoluments, and exercise the authority and powers, and perform the duties now or hereafter required by law to be performed by judges of the circuit court of the United States.

Sec. 10. That the court of transportation shall have exclusive original jurisdiction of all suits and proceedings of a civil nature in law or equity brought in the name of the United States or the Interstate Commerce Commission to enforce the provisions of this Act, the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto, the Act entitled "An Act to further regulate commerce with foreign nations and among States" approved February nineteenth, nineteen hundred and three, and any law that may hereafter be enacted amendatory of or supplementary to those Acts, and it shall also have exclusive original jurisdiction of all suits and proceedings of a civil nature in law or equity brought to enforce obedience to, or to restrain, enjoin, or otherwise prevent the enforcement and operation of, any order, ruling, or requirement made and promulgated by the Interstate Commerce Commission under the authority of any power conferred upon it by either of the aforesaid Acts or by any law that may hereafter be enacted amendatory thereof or supplementary thereto: *Provided, however*, That proceedings to enforce contumacious witnesses to attend and testify or produce documentary evidence before the Interstate Commerce Commission may be brought in any court of the United States of original jurisdiction, sitting in the place or district where the inquiry or hearing of the Commission is being held, and in all other respects such proceedings shall follow the course prescribed in section twelve of the aforesaid Act entitled "An Act to regulate commerce."

Sec. 11. That in the exercise of the jurisdiction defined and conferred upon it by this Act the court of transportation shall possess all the powers of a circuit court of the United States, so far as the same may be applicable.

Sec. 12. That in every suit or proceeding brought in the court of transportation to enforce orders, rulings, or requirements of the Interstate Commerce Commission, or

to restrain, enjoin, or otherwise prevent their enforcement and operation, the findings of fact made and reported by the Commission shall be received as prima facie evidence of each and every fact found, and no evidence on behalf of either party shall be admissible in any such suit or proceeding which was not offered, but which with the exercise of proper diligence could have been offered, upon the hearing before the Commission that resulted in the particular order or orders in controversy; but nothing herein contained shall be construed to forbid the admission, in any such suit or proceeding, of evidence not existing, or which could not, with due diligence, have been known to the parties at the time of the hearing before the Commission.

Sec. 13. That the court of transportation shall have power to summon and bring before it all parties named as defendants or respondents in proceedings before it in whatever judicial district, Territory, or possession of the United States they may reside, and subpoenas for witnesses to appear before the court of transportation may run into any judicial district or any Territory or possession of the United States.

Sec. 14. That the court of transportation, as a court of equity, shall be deemed always open for the purpose of filing any pleading, including any certification from the Interstate Commerce Commission, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, including temporary restraining orders, preparatory to the hearing upon their merits of all causes pending therein; and any justice of the court of transportation may, upon reasonable notice to the parties, make and direct and award at chambers, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, including temporary restraining orders, wherever the same are grantable, as of course, according to the rules and practice of the court.

Sec. 15. That in all cases affected by this Act where, under the laws heretofore in force, an appeal or writ of error lay from the final order, judgment, or decree of any circuit court of the United States to the Supreme Court, an appeal or writ of error shall lie from the final order, judgment, or decree of the court of transportation to the Supreme Court and that court only, and must be taken within thirty days from the date of entry thereof; and said Supreme Court shall give precedence to the hearing and decision of such appeal over all other causes except criminal cases, and the rules and regulations which, under existing law, govern appeals and writs of error from the several circuit courts to the Supreme Court shall govern appeals and writs of error from the court of transportation except as herein otherwise provided.

Sec. 16. That the court of transportation shall have power to prescribe the form and style of its seal, and to prescribe from time to time and in any manner not inconsistent with any law of the United States the forms of writs and other process and rules for the return thereof, the modes of framing and filing proceedings and pleadings, of taking evidence, and of drawing up, entering, and enrolling orders, judgments, and decrees, and otherwise to regulate its practice and procedure as may be necessary or convenient for the advancement of justice.

Sec. 17. That the costs and fees in the court of transportation shall be prescribed by a quorum of the justices thereof and shall be expended, accounted for, and paid over to the Treasury of the United States in the same manner as is now provided in respect of the costs and fees in the several circuit courts.

Sec. 18. That the court of transportation shall have power to appoint a clerk, a deputy clerk if necessary, a bailiff who shall act as crier, and a messenger, who shall receive annual salaries, as follows, payable from the Treasury of the United States: The clerk, five thousand dollars; the deputy clerk, if one shall be appointed, two thousand five hundred dollars; the bailiff, two thousand dollars, and the messenger one thousand eight hundred dollars. The clerk and deputy clerk shall subscribe to the oaths or affirmations prescribed for clerks of the several circuit and district courts of the United States, and shall each give bond in sums to be fixed and with sureties to be approved by the court, conditioned faithfully to discharge the duties of their office and seasonably to record the decrees, judgments, and determinations of the court of which they are, respectively, clerk and deputy clerk.

Sec. 19. That the justices, the clerk, and the deputy clerk of the court of transportation shall have power to administer oaths and affirmations.

Sec. 20. That the marshal of the United States for the District of Columbia, or for any judicial circuit of the United States in which the court shall be sitting, shall attend the sessions and shall execute the orders and processes of the court of transportation.

Sec. 21. That all Acts or parts of Acts inconsistent with this Act are hereby repealed.

Sec. 22. That this Act shall take effect on the first day of April, nineteen hundred and five.

VIEWS OF THE MINORITY.

The undersigned members of the Committee on Interstate and Foreign Commerce can not give their approval to all of H. R. 18588 as the best and most effective legislation to be had in order to cure the evils complained of by us, the President of the United States, and the country, although we admit that it contains some wholesome points and the state of legislation which would be brought about by its enactment would be superior to present legislation. No difference of opinion exists between us that additional legislation is required to make effective the primary requirement of the "act to regulate commerce," namely, "that all charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, shall be made reasonable and just."

We are not informed as to any dissent on the part of any member of the committee to the necessity and advisability of the Congress conferring upon the Interstate Commerce Commission the power, where a given rate has been challenged and, after a full hearing, found to be unreasonable and unjust, to decide, subject to judicial review, what shall be a reasonable and just rate to take its place, the decision or ruling of the Commission to take effect and to remain in operation until or unless the ruling so made by the Commission is held to be error or reversed by the proper Federal court having jurisdiction thereof.

We contend, and believe, that if the "Act to regulate commerce" is so amended, it will afford ample remedy for existing evils and abuses in the matter of unjust and unreasonable rates, alleged to be charged by railroads, and give equal protection and security to the rights and interests of the public and the railroads, especially if provision is made, as we propose, to expedite all hearings of injunction to restrain and annul rates, which was omitted in the present law to expedite proceedings. We contend that if the Interstate Commerce Commission is worthy to have this important power conferred on it by the Congress, subject to review of the proper Federal Courts, that it ought not, in the exercise of such power, to be hampered and trammelled by a multiplicity of rules, regulations, temporary restraining orders, provisions, and requirements incident to the creation of new and special courts, all tending to vexatious and needless delays and the defeat of the ends of justice. It is not, in our judgment, in harmony with the true intent and spirit of our theory of republican government or our judicial system, to signalize any special and distinct interest, vocation, or employment in our own country and among our own people by creating a special court to look after a special interest.

Congress can certainly be relied on not to enact hostile legislation against our railroads. The President of the United States said:

The act should be amended. The railway is a public servant. Its rates should be just and open to all shippers alike. The Government should see to it that, within its jurisdiction, this is so, and should provide a speedy and effective remedy to that

end. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies.

For quite ten years after the approval of the "Act to regulate commerce" the Commission acted upon the assumption that the law conferred the authority on the Commission to declare a given rate in lieu of a rate fully investigated and found to be unreasonable and unjust. The railroads adapted themselves to that construction.

No complaints were made that the Commission used its power improvidently. Rates, regulations, and practices were adjusted by the Commission and the railroads. No fear of irreparable damage being done by the Commission to the railroads was expressed. No special court of commerce or transportation was in existence, but the railroads took their chances, like all other interests, before the Federal courts as now organized. Quite twenty States of the Union have by legislative acts clothed their State commission with the power to make rates. In many of these States there were railroads subject only to State supervision. Yet railroads have flourished, prospered, and multiplied in those States.

It was only after the decision of the Supreme Court of the United States holding that the Interstate Commerce Commission, under "the act to regulate commerce," was not given the legislative authority to prescribe rates that the trouble commenced. Then railroads disregarded the authority of the Commission and exercised the arbitrary and undisputed power of fixing their own rates, subject to the harmless power of the Commission to admonish them "to cease and desist" from the violation of the law.

The real issue is, Shall Congress leave the rate-making power in the hands of the railroads, which has been arbitrarily used, and practically without governmental supervision or judicial revision, for years past; or shall we give in effective shape the simple and modified rate-making power to the Interstate Commerce Commission, which the President has called for in his message, and for which the Democracy contended for all last session of Congress, and many of us much longer than that, which the Industrial Commission advised, and which the Interstate Commerce Commission requested for the more effective doing of its work, safeguarded by the protection and safety that existing Federal courts can give if all cases are expedited where proper?

The bill reported by the majority contains provisions wholly unnecessary and superfluous for a certain speedy and efficient enforcement of the rate declared by the Commission in lieu of a rate found to be unreasonable and unjust. Where there is a plain, open, and lawful mode by which evils complained of can be remedied, the country ought and will condemn us if we persist in following another plan of legislation, however plausible, which invites litigation and guarantees in the construction of its legal intricacies, pleadings, and complications, discouraging and harmful delays and consequent postponement of the case for many years. We can not differ about the principle and we ought to be able to agree on such details as to make the statute real and effective, and not a failure. The bill of the majority, we respectfully submit, is of that character. Why should a special court of transportation be created for the special and exclusive jurisdiction of railroad cases? The bill, in a qualified way, seeks to counteract the universal dislike that the people have to the creation of a special privileged court, called into existence on the one idea only that the conflicting interests of the people with the great railroad corporations

of the country shall be adjudicated in that special court by assigning the members of the court to other duties when business will permit. Can it be denied that such a condition would invite and stimulate the concentration of the powerful railroad influences in a manner well calculated to do injury?

Does a special court provide against the delays that have been so much complained of in the enforcement of the orders of the Commission under existing law? Can it be denied that this special court of transportation has exactly, under the bill of the majority, the same authority in passing upon the "reasonableness" of a rate, fixed by the Commission, that the Interstate Commerce Commission has now under the present law, the act to regulate commerce? The Commission now can say whether a rate is unreasonable and unjust, but it can not declare what rate can take the place of the one declared unreasonable. The court of transportation, provided for in the bill, will exercise the same authority. It can not be clothed with authority to declare what a reasonable rate is, because that is purely a legislative act.

We have an abundance of courts to meet the demands of the country. No complaints have been made that the Federal courts, as now organized, are unable to dispatch the business with fairness, impartiality, and ability. In this connection we call attention to the provisions of section 12 of the bill, which are worthy of support and cordial indorsement, because it adopts the usual and established rules for the ascertainment of truth and the administration of justice in an appellate court. The findings of fact reported by the Commission must be received as "prima facie evidence," and the usual provision for newly discovered evidence is set forth in plain language, but the Commission, and not the court, should rehear the case and pass upon the newly discovered evidence. The court should deal with law, not facts. We could but conclude that the court of transportation was in the broadest sense strictly "an appellate court," but that delusion was promptly dispelled when we read the provisions of section 14 of the bill.

That section contains the "railroad joker" of all the provisions of the bill. It declares that "the court of transportation, etc., is always open for the purpose of filing any pleading, including any certification from the Interstate Commerce Commission, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, including temporary restraining orders, preparatory to the hearing upon their merits of all causes pending therein, and any justice of the court of transportation may, upon reasonable notice to the parties, make and direct and award at chambers, and in vacation as well as in term, all such process, Commission orders, rules, and other proceedings, including temporary restraining orders, whenever the same are not grantable," of course, "according to the rules and practice of the court."

A hearing of a case "upon its merits" takes up the case anew. A case taken from the Interstate Commerce Commission by appeal to the court of transportation would be tried *de novo* if tried upon its merits. What will be the effect of such a provision? The railroads decline to open up their case in full before the Commission and await the hearing before the court of transportation. This section authorizes "all restraining orders" to be issued, superseding the orders of the Commission, "on reasonable notice to the parties," including temporary

restraining orders wherever the same are not grantable as of course. Temporary restraining orders of the "of course character" are granted on *ex parte* affidavits without any notice whatever. Here you have the rate fixed by the Commission enjoined and restrained by *ex parte* affidavits, with quite a certainty that the temporary order will be made final.

It can not be concluded by the majority that it would be obnoxious to the Constitution to have required that any temporary restraining order or other proceedings should not supersede the order of the Commission until and unless notice had been given to all parties and hearing had on the same. This would have been an open and fair dealing with this great question. Why, we are reliably informed that on less distinguished persons than the President of the United States, the able and distinguished Attorney-General of the United States, and Secretary of the Navy, recommended, if they did not inspire, a bill now pending before the Judiciary Committee of the House requiring that notice should be given and a hearing had before the issuance of a temporary injunction against strikers. With such provisions as we find in section 14 of the bill, what possible confidence can the public have in the prompt and efficient enforcement of the power given by the bill to the Commission to declare what a reasonable rate is.

The power is granted, but its execution is regulated by injunctions, restraining orders, and other proceedings to the degree of destroying its usefulness, while it ought to be a law with a remedy so easy of enforcement that anyone could understand it.

The majority, in the provisions of section 3 of the bill, allow the Commission to reopen the case and modify, suspend, or annul its order, notwithstanding the fact that the court of transportation was then judicially reviewing the order, and even engaged in trying the case on its merits. It appears to us that confusion could readily arise when the Commission and the transportation court, each having a like authority to hear a case, should be engaged in that business at the same time. As an independent provision, section 3 would not be objectionable.

In the very limited time given us to prepare this minority report, we have undertaken only to point out the salient defects of the bill of the majority, and show how and where, in our opinion, it will fail to give the relief so earnestly demanded by the people of all sections and interests of our people.

The people have the right to expect this Congress to enact legislation that will relieve them of the unjust and oppressive burdens of unreasonable railroad rates that they have suffered from so long. The minority members, in view of the vast importance of this question to all the people, express the earnest hope that we will be allowed the opportunity of offering as a substitute for the bill of the majority the bill, a copy of which is hereto attached, which substantially expresses the views of the undersigned members of the committee.

The bill we recommend is restricted to such provisions as, in our judgment, are necessary to give effectiveness to the "Act to regulate commerce." It is not to be expected that all reforms needed can be secured at once, but we should never lose sight of the controlling and all-important requirement—the speedy enforcement of a rate declared by the Commission. This is the prime consideration in the plan of relief proposed by our bill.

We see no occasion or necessity to increase the members, terms, nor the compensation of the Commissioners. We have heard no complaint made of either. We have been led to believe that retrenchment is demanded in the affairs of the Government, inasmuch as the disbursements have for months past exceeded its receipts. The bill under consideration increases the expenses without a corresponding benefit to the public. The court of transportation is an additional and unnecessary expense. It makes no improvement in the present procedure nor in expedition of cases. A careful scrutiny of the same discloses the fact that it increases obstacles in the execution of the law. It seems to us that conferring the rate-making power on the Interstate Commerce Commission will tend not to increase litigation or to require more courts, but, with the assurance of celerity and certainty of disposition of cases, litigation would rapidly disappear and efficiency be secured.

We believe that the Interstate Commerce Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review; and we also believe that all proceedings brought in the courts to arrest, enjoin, or annul a rate declared by the Commission shall be expedited in all the courts to which such cases may be carried, as well as the cases arising under the act to regulate commerce.

W. C. ADAMSON,
W. H. RYAN,
R. C. DAVEY,
WILLIAM RICHARDSON.

I indorse, subject to my views set out in a report signed by me with Hon. D. W. Shackelford, the provisions of the Davey bill to regulate railway abuses.

W. B. LAMAR.

A BILL to empower the Interstate Commerce Commission to fix transportation rates in certain contingencies, for the enforcement of its orders, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when, hereafter, upon complaint made, and after investigation and hearing had, the Interstate Commerce Commission shall declare a given rate, whether joint or single, or regulation or practice, for transportation of freight or passengers, unreasonable, or unjustly discriminative, it shall be the duty of the Commission, and it is hereby authorized to perform that duty, to declare, at the same time, what would be a fair, just, and reasonable rate, or regulation, or practice in lieu of the rate, regulation, or practice declared unreasonable, and the new rate, regulation, or practice so declared shall become operative twenty days after notice: *Provided*, That the Commission shall in no case have power to raise a rate filed and published by a carrier.

SEC. 2. That whenever, in consequence of the decision of the Interstate Commerce Commission, a rate, regulation, or practice has been established and declared as fair, just, and reasonable, and litigation shall ensue because of such decision, the rate, regulation, or practice fixed by the Interstate Commerce Commission shall continue as the rate, regulation, or practice to be charged by the carrier during the pendency of the litigation and until the decision of the Interstate Commerce Commission shall be held to be error on a final judgment of the questions involved by the United States court having proper jurisdiction, but no proceeding by any court taking jurisdiction shall consider any testimony except such as is contained in the record.

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SEC. 3. That when the rate substituted by the Commission as hereinbefore provided shall be a joint rate, and the carriers, parties thereto, fail to agree upon the apportionment thereof among themselves within twenty days after notice of such order, the Commission may issue a supplemental order declaring the portion of such joint rate to be received by each carrier party thereto, which shall take effect of its own force as part of the original order; and when the order of the Commission prescribes the just relation of rates to or from common or competitive points on the lines and between common or competitive points and the respective terminals of said lines of the several carriers parties to the proceeding, and such carriers fail to notify the Commission within twenty days after notice of such order that they have agreed among themselves as to the changes to be made to effect compliance therewith, the Commission may issue a supplemental order prescribing the rates to be charged to or from such common or competitive points by either or all of the parties to the proceeding, which order shall take effect of its own force as part of the original order, and shall continue as the rate regulation or practice to be charged by the carrier or carriers during the pendency of litigation resulting from the order of the Commission, until, or unless, the decision of the Commission shall be held to be error on final judgment of the questions involved by the United States court having proper jurisdiction.

SEC. 4. That in case such common carrier or carriers shall neglect, or refuse to adopt, or keep in force, such tariffs of rates, fares, charges, and classifications, or regulations, or practice, so declared and fixed by the Commission, it shall be the duty of the Commission to publish such tariffs of rates, fares, charges, and classifications, or regulations, or practice, as the Commission has declared to be reasonable and lawful, in such manner as the Commission may deem expedient. Thereafter, if any such carrier or carriers shall charge, impose, or maintain a higher or lower fare, charge, or classification, or shall enforce any different regulation or practice than that so declared or fixed by the Commission, such common carrier or carriers shall forfeit to the United States the sum of five thousand dollars for each and every day it has continued to refuse or neglected to enforce and apply the said tariff regulation so published by the Commission. Each forfeiture herein provided for shall be payable into the Treasury of the United States, and shall be recovered in a civil suit in the name of the United States, brought in the district where the carrier has its principal office, or in any district through which the road of the carrier runs. It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of such forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel under this act, paying the expenses of such employment out of its own appropriation.

SEC. 5. That all existing laws relating to the procurement of witnesses, books, papers, contracts, or documents, and the enforcement of hearings in cases or proceedings under or connected with the act to regulate commerce shall also apply to any case or proceeding affected by this act.

SEC. 6. That all cases arising under the provisions of this act and all cases in which any carrier or carriers shall, by any suit or proceeding, seek to enjoin or annul, suspend, or modify any order or ruling of the Interstate Commerce Commission shall have precedence over all other cases, except criminal, in any court to which any such case may be carried.

SEC. 7. That this act shall take effect from its passage.

VIEWS OF MESSRS. SHACKLEFORD AND LAMAR.

It is with great reluctance that we dissent from the expressed views of other members of the committee. The overshadowing importance of the subject, however, demands that we shall put forth every possible effort to secure for the people the full measure of relief which they demand and to which they are entitled. It has been urged that it were better to accept at this time partial remedies for the evils complained of and trust to the future legislation for complete relief. We think this would be a most grievous error. This suggestion might have force if we, as representatives of the people, could at any time bring up for consideration proposed legislation. We all know this can not be done under the rules of the House as at present administered. Now, after decades of waiting, under the stress of an intense public sentiment and the pressure of a strenuous Executive, we are permitted to legislate upon this great question. What shall we do with our opportunity? Should we not go boldly into a full consideration of the whole subject? If we do less, will the people excuse us?

Any legislation at this time will fall far short of the work unless it shall provide:

1. Power to find a given rate unreasonable or unjust and to prescribe a reasonable or just rate to be substituted.
2. Power to prescribe a joint rate.
3. Power to eliminate unjust discrimination.
4. Power to stop rebates and secret cut rates.
5. Power to regulate private cars and private car lines.
6. Power to regulate terminals and terminal facilities.
7. Power to regulate freight classifications.
8. Power to compel the furnishing of equal facilities to all.
9. The preservation of competition between carriers and markets and a limitation upon the power of the Commission to raise rates or prescribe minimum rates.
10. For facilitating a speedy conclusion of proceedings in courts and limiting litigation as far as the same may be done.

With a view to securing these remedies we herewith submit a substitute bill which we think amply meets the demands. The basis of the substitute we offer is the Hearst bill. It contains all of the provisions of the Davey bill, but it also goes much further in what we regard as required remedial legislation.

All of which is respectfully submitted.

D. W. SHACKLEFORD.
W. B. LAMAR.

A BILL to increase the powers of the Interstate Commerce Commission and to expedite the final decision of cases arising under the act to regulate commerce by creating an interstate commerce court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter when the Interstate Commerce Commission shall, in any case pending before it under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended and supplemented by other acts of Congress, find that a rate for the transportation of freight or passengers is unreasonable or unjust, it shall determine what would be a reasonable and just rate in such case, and shall order that the rate so found to be reasonable and just shall be substituted for the rate so found to be unreasonable or unjust: *Provided, however,* That in no case shall the Interstate Commerce Commission have any power to order any carrier to raise any rate which it has duly filed and published.

SEC. 2. That the provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof and supplemental thereto, shall apply to all transportation of interstate commerce over any line or lines of railroad, and also to such transportation over any part water and part rail route used for through shipment or through carriage.

SEC. 3. That all persons, copartnerships, joint stock companies, associations, and corporations owning or operating, or both owning and operating, any private freight cars or any freight cars not owned by a railroad company, used in interstate commerce, are hereby declared to be common carriers and are hereby made subject to all the provisions, so far as they are applicable, of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplemental thereto.

SEC. 4. That all terminal facilities, tracks, switches, spurs, freight depots, warehouses, and all facilities used or necessary, and all acts and services performed or necessary in relation to the forwarding and transportation of any interstate commerce and the preservation and safety of the same in transit, are hereby made subject to the provisions, so far as they may be applicable, of the act of Congress to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof and supplemental thereto.

SEC. 5. That when the rate fixed by the Commission is a joint rate and the carriers parties thereto fail to agree upon the apportionment thereof among themselves within twenty days after notice of such order, the Commission may issue a supplemental order fixing the portion of such joint rate to be received by each carrier party thereto.

SEC. 6. That it shall not be lawful for any common carrier subject to any of said acts, or any company or person acting for or in the stead of such common carrier, to advance, reduce, or cancel any individual or joint rate, fare, or charge now or hereafter in force over the route or line of such common carrier unless or until notice thereof, plainly showing the change intended to be made in such rate, fare, or charge, and the date when the same shall take effect, shall have been filed with the Interstate Commerce Commission and posted in all depots or stations where passengers or freight are received for transportation under such rate, fare, or charge for at least thirty days prior to the date when such change is to become effective: *Provided, however,* That said Commission may, for good cause shown, upon special application, allow a particular rate, fare, or charge to be changed upon shorter notice published and filed as aforesaid. No joint rate, fare, or charge shall become effective until all carriers named as parties thereto shall have concurred therein by signing the rate schedule or filing general authorization or specific notice of concurrence with the Commission; and any common carrier enforcing any schedule of joint rates, fares, or charges which shall not have been concurred in by all carriers parties thereto, or any schedule of rates, fares, or charges which shall not have been published and filed as required by this section, shall be subject to a forfeiture of one hundred dollars for each day such unlawful tariff shall be published or enforced. The said Commission may prescribe the form, contents, and arrangement of all schedules of rates, fares, and charges, and it shall be the duty of said Commission to make orders from time to time, as may be practicable, with a view of securing uniformity in freight classification and the use of rate schedules containing concise and easily understood provisions and regulations.

SEC. 7. That when any notice of advance in rates, fares, or charges shall be filed with the Commission, the said Commission shall have authority to inquire into the lawfulness of such advance and make orders in respect thereof to the same effect as if such advanced rate, fare, or charge were actually in force. The provisions of this section shall also apply to notice of any change in classification of freight or other regulations affecting rates.

SEC. 8. That when in any investigation made by the Interstate Commerce Commission it shall be made to appear to the satisfaction of the Commission that any-

thing has been done or omitted to be done by any common carrier, respondent or defendant, in such proceeding in violation of the provisions of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, or any act amendatory thereof or supplemental thereto, or of the provisions of this act, it shall be the duty of the said Commission forthwith to cause a copy of its report in respect thereto to be delivered to such common carrier, together with an order or orders directing such common carrier, its officers and agents, and any receiver or trustee of its property, to wholly cease and desist from such violation, and to establish, put into effect, and maintain such individual rate, fare, charge, relation of rates, fares, or charges, joint rate, fare, or charge, and division thereof, classification of freight articles involved in the proceeding through and continuous carriage over connecting lines or roads, including intersecting switches or connections, and regulations concerning transportation, including the furnishing and apportionment of cars, the provision of other facilities connected with or incidental to transportation, and the receiving, forwarding, and delivery of traffic, as in the judgment of said Commission may be necessary to prevent the continuance in any degree of such violation. That whenever any common carrier, subject to the provisions of this act, shall fail or refuse, after reasonable notice, to furnish cars to shippers for the transportation of freight as interstate commerce, or to forward and deliver such freight at destination within a reasonable time, such failure or refusal shall be deemed to constitute unjust discrimination and undue and unreasonable prejudice and disadvantage, and in any case or proceeding pending before the Commission or any circuit or district court of the United States based upon such failure or refusal on the part of any such common carrier, proof that in the furnishing of cars or forwarding or delivery of its traffic other shippers have been preferred shall not be required.

SEC. 9. That subject to the proceeding in review hereinafter provided every order issued by the Interstate Commerce Commission under the authority of this act shall become effective and be obeyed by the carrier or carriers mentioned in such order on and after the date specified for compliance in such order: *Provided*, That whenever any such order requires changes in rates, fares, or charges, classification of freight, or regulations affecting the compensation of any carrier, it shall not go into effect until after the expiration of thirty days from the date of service thereof upon the carrier. All orders of the Commission amending or modifying orders previously issued, if made upon application of the carrier, shall become effective as therein provided. The Commission shall have authority at all times to alter, modify, add to, or vacate any order it shall have issued. In case any person, company, or corporation other than a carrier, who may be interested in the traffic or transportation involved; shall be included as a party defendant or respondent in addition to the carrier in a proceeding before the Commission, orders may issue against such additional party in the same manner, to the same extent, and subject to the same provisions as are authorized with respect to carriers.

SEC. 10. That there is hereby created a court to be known as "The Court of Interstate Commerce," which shall consist of three justices, of whom two shall constitute a quorum. Said court shall be a court of record, with jurisdiction as hereafter defined. The justices shall be appointed by the President, by and with the advice and consent of the Senate, and shall, unless removed by the President for just cause, hold their offices during good behavior. The salary of each justice shall be seven thousand five hundred dollars per year, payable in the same manner as salaries of judges of other courts of the United States. The provisions of section seven hundred and fourteen of the Revised Statutes of the United States relating to the retirement of judges of the United States courts shall apply to the justices of the Court of Interstate Commerce. Such court shall prescribe the form and style of its seal and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction. The court shall appoint a clerk, who shall perform and exercise the same duties and powers in regard to all matters within its jurisdiction as are now exercised and performed by the clerk and reporter of the Supreme Court of the United States, so far as may be applicable. The salary of the clerk of the court shall be three thousand dollars a year, payable in the same manner as the salaries of the justices of said court. The court shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law. The court shall have authority to appoint and fix the compensation of such deputy clerks or attendants as it may find necessary to the proper performance of its duties. The salaries of the officers and all the expenses of the court, including all necessary expenses for transportation incurred by the justices of the court, or by the marshal, or clerk, or any deputy clerk, or attendant of the court, upon official business in any other place than in the city of Washington, shall be allowed and paid out of the appropriation for salaries and expenses of the courts of

the United States upon presentation of itemized vouchers therefor. The general sessions of the court shall be held in the city of Washington, but whenever the convenience of the public may be promoted, or delay and expense prevented thereby, the court may hold sessions in any part of the United States. The court shall be furnished by the Attorney-General of the United States with suitable offices and all necessary office supplies.

Sec. 11. That said court of interstate commerce shall have exclusive jurisdiction to review all orders of the Interstate Commerce Commission and summarily to enforce performance thereof by writs or other proper process. The said court shall also have exclusive jurisdiction in all proceedings brought by or upon the request of the Interstate Commerce Commission under section three of an act to further regulate commerce with foreign nations and among the States, approved February nineteenth, nineteen hundred and three. The said court shall also have exclusive and all necessary jurisdiction to enforce, upon the petition of the United States or of the Interstate Commerce Commission, the requirements of the act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof and supplemental thereto, in respect of the filing and publication of schedules of rates, fares, and charges of common carriers subject to the provisions of said acts. Disobedience of any order, writ, or other process of said court shall constitute contempt of said court, punishable by a fine payable into the Treasury of the United States of five thousand dollars for each offense, or by imprisonment for not more than one year, or by both such fine and such imprisonment. Every distinct violation of any such order, writ, or other proper process of said court shall be a separate offense, and each day of the continuance of such violation shall be deemed a separate offense.

Sec. 12. That any party to a proceeding before the Interstate Commerce Commission aggrieved by an order of said Commission may, within thirty days after issuance of such order, file with said court a petition for review. Upon the filing of such petition it shall be the duty of the clerk of the said court to serve a copy thereof upon the Interstate Commerce Commission, and after service of such copy of petition upon the Interstate Commerce Commission it shall be its duty within twenty days thereafter to cause to be filed in said court a duly certified copy of the entire record in connection with the order to be reviewed, including the petition, answers, testimony, report, and opinion of the Commission, its order and all other papers in connection therewith. Said court shall thereupon, as speedily as may be, proceed to review the order appealed from as to its justness, reasonableness, and lawfulness upon the said record returned by the Commission, and thereupon if, after hearing the parties, said court shall be of the opinion that such order is unjust, unreasonable, or unlawful, it shall modify, set aside, or annul the same by appropriate decree or remand the cause to the Interstate Commerce Commission for a new or further hearing; otherwise the order of said Commission shall be affirmed. Pending such review the said court may, upon application and hearing, if in its opinion the order under review is clearly unjust, unreasonable, or unlawful, suspend said order.

Sec. 13. That the defense in such proceedings in review, except as to orders of the Commission dismissing an application or petition, shall be undertaken by the Attorney-General of the United States, and the costs and expenses of such defense shall be paid out of the appropriation for the expense of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any such proceeding, paying the expense of such employment out of its own appropriation.

Sec. 14. That if any party bound thereby having failed to file petition for review within the time hereinabove specified shall refuse or neglect to obey or perform any order of the Commission while same is in force, or having filed such petition for review shall refuse or neglect to obey or perform any order of the Commission as modified or affirmed by said court upon review as aforesaid, obedience and performance thereof shall be summarily enforced by a writ of injunction, attachment, or other proper process; and it shall be lawful for such court, upon petition of said Commission, or of any party interested, accompanied by a certified copy of the order alleged to be violated and evidence of the violation alleged, to issue a writ of injunction, or other proper process, restraining such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission and enjoining obedience to the same; and in case of any disobedience of any such writ it shall be lawful for such court to issue writs of attachment, or any other proper process, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other persons failing to obey such writ or other proper process.

Sec. 15. That the decisions of said court shall be final, and no appeal therefrom

shall lie unless, in the opinion of the said court, a constitutional question is involved which ought to be reviewed by the Supreme Court of the United States, or unless the Supreme Court of the United States, upon it appearing to its satisfaction that a constitutional question is involved in said decision which ought to be reviewed in the Supreme Court, issues a writ of certiorari directed to the clerk of said court to transmit the record in such case to the Supreme Court for review. In the Supreme Court such case shall take precedence over all other proceedings except criminal cases. During the pendency of any appeal to the Supreme Court neither the order of said court nor the execution of any writ or process shall be stayed or suspended. The defense in all such appeals in the Supreme Court, except appeals from orders affirming an order of the Commission which dismisses an application or petition, shall be undertaken by the Attorney-General of the United States, and the costs and expenses of such defense shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any appeal to or review by the Supreme Court, paying the expense of such employment out of its own appropriation.

SEC. 16. That in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of said court of interstate commerce in requiring the attendance and testimony of witnesses and the production of books, papers, and documents, under the provisions of the act to regulate commerce and the acts amendatory thereof and supplemental thereto, and in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of said acts, or other person, said court may issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so desired) and give evidence touching the matter in question; and any failure to obey such order of the court shall be punished by such court as a contempt thereof in the same manner as hereinabove provided for disobedience of other orders of said court amounting to a contempt thereof.

SEC. 17. That it shall be the duty of the Interstate Commerce Commission to proceed expeditiously with the trial and determination of all cases brought before it, and to render a decision in each case within sixty days after the cause has been finally submitted.

SEC. 18. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed: *Provided*, That such repeal shall not affect causes now pending in court, and such causes shall be prosecuted to a conclusion in the manner heretofore provided by law. All existing laws relative to testimony in cases or proceedings under or connected with the act to regulate commerce and the acts amendatory thereof or supplemental thereto shall also apply to any case or proceedings authorized by this act.

SEC. 19. That this act shall take effect from the date of its passage.

THE ACT TO REGULATE COMMERCE

(AS AMENDED)

AND

ACTS SUPPLEMENTARY THERETO,

INCLUDING -

ACTS RELATING TO RAILWAY SAFETY APPLIANCES AND
RAILWAY ACCIDENTS.

THE ANTITRUST ACT

AND

ACTS SUPPLEMENTARY THERETO.

1887-1905.

ACT TO REGULATE COMMERCE AND AMENDING ACTS, SHOWING CITATIONS.

1887-1903.

Public No. 41, approved February 4, 1887, and in effect April 5, 1887, 2d sess., 49th Cong. (U. S. Stat. L., vol. 24, p. 379; Supp. to Rev. Stat., vol. 1, p. 529).

Public No. 237, approved and in effect August 7, 1888, 1st sess., 50th Cong. (U. S. Stat. L., vol. 25, p. 382; Supp. to Rev. Stat., vol. 1, p. 602).

Public No. 125, approved and in effect March 2, 1889, 2d sess., 50th Cong. (U. S. Stat. L., vol. 25, p. 855; Supp. to Rev. Stat., vol. 1, p. 684).

Public No. 72, approved and in effect February 10, 1891, 2d sess., 51st Cong. (U. S. Stat. L., vol. 26, p. 743; Supp. to Rev. Stat., vol. 1, p. 891).

Public No. 54, approved and in effect February 11, 1893, 2d sess., 52d Cong. (U. S. Stat. L., vol. 27, p. 443; Supp. to Rev. Stat., vol. 2, p. 80).

Public No. 38, approved and in effect February 8, 1895, 3d sess., 53d Cong. (U. S. Stat. L., vol. 28, p. 643; Supp. to Rev. Stat., vol. 2, p. 369).

Public No. 82, approved February 11, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 823). (Suits in equity.)

Public No. 103, approved and in effect February 19, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 847). (Elkins-Mann act.)

SAFETY-APPLIANCE ACT AS AMENDED.

1893-1903.

Public No. 113, approved and in effect March 2, 1893, 2d sess., 52d Cong., (U. S. Stat. L., vol. 27, p. 531; Supp. to Rev. Stat., vol. 2, p. 102).

As amended by Public No. 70, approved April 1, 1896, 1st sess., 54th Cong. (U. S. Stat. L., vol. 29, p. 85; Supp. to Rev. Stat., vol. 2, p. 455).

Public No. 171, approved March 3, 1901, 2d sess., 56th Cong. (U. S. Stat. L., vol. 31, p. 1446; Supp. to Rev. Stat., vol. 2, p. 1810).

Public No. 133, approved March 2, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 943).

Public No. 98, approved February 23, 1905, 3d sess., 58th Cong. (U. S. Stat. L., vol. —).

TRUST ACTS, 1890-1903.

Public No. 190, approved July 2, 1890, 1st sess., 51st Cong. (U. S. Stat. L., vol. 26, p. 209; Supp. to Rev. Stat., vol. 1, p. 762). (Sherman antitrust act.)

Public No. 227, became a law August 27, 1894, 2d sess., 53d Cong. (U. S. Stat. L., vol. 28, p. 570; Supp. to Rev. Stat., vol. 2, pp. 333-334). (Antitrust amendments to Wilson tariff act.)

Public No. 11, approved July 24, 1897, 1st sess., 55th Cong. (U. S. Stat. L., vol. 30, p. 213; Supp. to Rev. Stat., vol. 2, p. 714). (Antitrust amendments to Dingley tariff act.)

Public No. 82, approved February 11, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 823). (Suits in equity.)

Public No. 87, approved February 14, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 825). Extract from Department of Commerce act.

Public No. 115, approved February 25, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 854). Extract from legislative, executive, and judicial act. Appropriation to enforce the Sherman antitrust act.

Public No. 156, approved March 3, 1903, 2d sess., 57th Cong. (U. S. Stat. L., vol. 32, p. 1031). Extract from general deficiency act. Authority for appointment of assistants to the Attorney-General.

THE ACT TO REGULATE COMMERCE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

Carriers and transportation subject to the act.

Act does not apply to transportation wholly within one State.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

What the terms "railroad" and "transportation" include.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be

Charges must be reasonable and just.
 reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Unjust discrimination defined and forbidden.

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Undue or unreasonable preference or advantage forbidden.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Facilities for interchange of traffic.

Discrimination between connecting lines forbidden.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed

Long and short haul provision.

as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Commission has authority to relieve carriers from the operation of this section.

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Pooling of freights and division of earnings forbidden.

SEC. 6. (*As amended March 2, 1889.*) That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established, and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Printing and posting of schedules of rates, fares, and charges, including rules and regulations affecting the same, terminal charges and freight classifications.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received

Printing and posting of schedules of rates on freight carried through a foreign country.

for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

Freight subject to customs duties in case of failure to publish through rates.

Ten days' public notice of advances in rates must be given.

Three days' public notice of reduction in rates must be given.

Published rates not to be deviated from.

Copies of schedules of rates, fares, and charges must be filed with Commission.

Copies of contracts, agreements, and arrangements must be filed with Commission.

Joint tariffs must be filed with Commission.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier,

and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

Power of Commission to prescribe publicity.

No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

Ten days' notice to Commission of advance in joint rates, fares, and charges.

Three days' notice to Commission of reduction in joint rates, fares, and charges.

Power of Commission to make advances or reductions public.

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

Joint rates, fares, and charges must not be deviated from.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

Commission may prescribe forms of schedules of rates, fares, and charges.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other

Penalties for neglect or refusal to file or publish rates, fares, and charges.

penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

Continuous carriage of freight from place of shipment to place of destination.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common car-

rier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Liability of common carriers for damages.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Persons claiming to be damaged may elect whether to complain to the Commission or bring suit in a United States court.

Officers, &c., of defendant may be compelled to testify.

SEC. 10. (*As amended March 2, 1899.*) That any common carrier subject to the provisions of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty

Penalties for violations of act by carriers, or when the carrier is a corporation, its officers, agents, or employees; Fine and imprisonment.

of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Penalties for
false billing, etc.,
by carriers, their
officers or agents;
Fine and imprison-
ment.

Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years; or both, in the discretion of the court, for each offense.

Penalties for
false billing, etc.,
by shippers and
other persons;
Fine and imprison-
ment.

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to

a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Penalties for inducing common carriers to discriminate unjustly: Fine and imprisonment. Joint liability with carrier for damages.

SEC. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the

Interstate Commerce Commissioners—how appointed.

Terms of Commissioners.

duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Power and duty of Commission to inquire into business of carriers and keep itself informed in regard thereto.

“SEC. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Commission required to execute and enforce provisions of this act.

Duty of district attorney to prosecute under direction of Attorney-General.

Costs and expenses of prosecution to be paid out of appropriation for courts.

Power of Commission to require attendance and testimony of witnesses and production of documentary evidence

Commission may invoke aid of courts to compel witnesses to attend and testify.

“Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

Penalty for disobedience to order of the court.

“And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said

Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Claim that testimony or evidence will tend to criminate will not excuse witness.

"The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Testimony may be taken by deposition.

Commission may order testimony to be taken by deposition.

Reasonable notice must be given.

Testimony by deposition may be compelled in the same manner as above specified.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Manner of taking depositions.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stip-

When witness is in a foreign country.

Depositions must be filed with the Commission.

Fees of witnesses and magistrates.

Complaints to Commission. How and by whom made. How served upon carriers.

Reparation by carriers before investigation.

Investigations of complaints by the Commission.

Complaints forwarded by State Railroad Commissions.

Institution of inquiries by the Commission on its own motion.

Complainant need not be directly damaged.

Commission must make report of investigations.

Reparation.

Findings of Commission prima facie evidence in judicial proceedings.

ulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

SEC. 14. (*As amended March 2, 1889.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Reports of investigations must be entered of record.
Service of copies on parties.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Reports and decisions. Authorized publication to be competent evidence.

Publication and distribution of annual reports of Commission.

SEC. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Notice to common carrier to cease from violation of act.

Compliance with notice to cease from violation of act. Reparation.

SEC. 16. (*As amended March 2, 1889.*) That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United

Petition to United States courts in cases of disobedience to order of Commission.

States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may

Power of United States courts to hear and determine cases of disobedience.

- be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and

Findings of fact of the Commission shall be prima facie evidence.

Writs of injunction or other process against carriers in cases of disobedience.

on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common car-

rier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Punishment for refusal to obey writs of injunction or other proper process: Fine.

Appeals to Supreme Court of United States.

Appeals shall not operate to stay order or writs issued by the court.

Costs and counsel fees.

Duty of district attorneys to prosecute under direction of Attorney-General.

Costs and expenses of prosecutions to be paid out of appropriations for courts

If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said court shall by its order then fix a time

Petition to United States courts in cases of disobedience when trial by jury is necessary.

and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid.

Findings of fact of the Commission shall be prima facie evidence.

At the trial the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing then the court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more

Trial by jury.

Trial by court.

Appeals to Supreme Court of United States.

either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court. If the judgment of the circuit court shall be in favor of the party complaining he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Counsel or attorney's fees.

Interstate Commerce Commission. Form of procedure.

SEC. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the

Parties may appear before the Commission in person or by attorney.

request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Official seal.

SEC. 18. (*As amended.*) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Salaries of Commissioners.

Secretary—how appointed; salary.

Employees.

Offices and supplies.

Witnesses' fees.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Expenses of the Commission—how paid.

SEC. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

Principal office of the Commission.

Sessions of the Commission.

Commission may prosecute inquiries by one or more of its members in any part of the United States.

SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner

Carriers subject to the act must render full annual reports to Commission.

What reports of carriers shall contain.

of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Commission may prescribe methods of keeping accounts.

Annual reports of the Commission to Congress on or before December 1 each year

SEC. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

SEC. 22. (*As amended March 2, 1889, and February 8, 1895.*) That nothing in this act shall prevent the carriage,

Persons and property that may be carried free or at reduced rates.

storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall

Mileage, excursion, or commutation passenger tickets.

be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act: *Provided further*, That nothing in this act shall prevent the issuance of joint interchangeable five-thousand mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the

Passes and free transportation to officers and employees of railroad companies.

Provisions of act are in addition to remedies existing at common law. Pending litigation not affected by act.

Joint interchangeable five-thousand-mile tickets. Amount of free baggage.

Publication of rates.

Sale of tickets.

Penalties.

Commission in force at the time. The provisions of section ten of this act shall apply to any violation of the requirements of this proviso.

Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities.

NEW SECTION (Added March 2, 1889). That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ:

Peremptory mandamus may issue notwithstanding proper compensation of carrier may be undetermined.

Provided, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

Remedy cumulative, and shall not interfere with other remedies provided by the act.

Public No. 41, approved February 4, 1887, as amended by Public No. 125, approved March 2, 1889, and Public No. 72, approved February 10, 1891. Public No. 38, approved February 8, 1895.

An act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Attendance and testimony of witnesses and production of documentary evidence compulsory before the Commission, and in any case, criminal or otherwise, in the courts.

no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged

violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Immunity to
testifying wit-
nesses.

Perjury ex-
cepted.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Penalties: fine
or imprisonment,
or both.

Public, No. 54, approved, February 11, 1893. second session Fifty-second Congress.

An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Driving-wheel
and train brakes.

SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful

Automatic
couplers.

for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

When carriers may lawfully refuse to receive cars from connecting lines or shippers.

SEC. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

Grab irons and handholds.

SEC. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Standard height of drawbars for freight cars.

SEC. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

Penalty for violation of the provisions of this act.

SEC. 6. (*As amended April 1, 1896.*) That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its

line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

Duty of United States district attorney.

Duty of Interstate Commerce Commission.

Exceptions to the act.

SEC. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

Power of Interstate Commerce Commission to extend time of carriers to comply with this act.

SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Employees not deemed to assume risk of employment.

Public, No. 113, approved, March 2, 1893, amended April 1, 1896.

NOTE.—Prescribed standard height of drawbars: Standard-gauge roads, 34½ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

An act to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Safety-appliance act of Mar. 2, 1893, as amended by act of Apr. 1, 1896, shall apply in Territories and District of Columbia.

Provisions of safety-appliance acts as to couplers shall apply in all cases when couplers are brought together.

Safety-appliance acts shall apply to all equipment of any railroad engaged in interstate commerce.

That the provisions and requirements of the Act entitled "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said Acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

Exceptions.

Power or train brakes on not less than 50 per cent of cars in trains shall be used and operated.

SEC. 2. That whenever, as provided in said Act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said Act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Commission may increase minimum percentage of power or train brake cars to be used.

Penalty.

Act effective Sept. 1, 1903.

SEC. 3. That the provisions of this Act shall not take effect until September first, nineteen hundred and three. Nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission,

or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this Act, apply to this Act.

Provisions, powers, duties, requirements, and liabilities specified in act of Mar. 2, 1893, and act of Apr. 1, 1896, apply to this act.

Public, No. 133, approved, March 2, 1903, second session Fifty-seventh Congress.

An act supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first-named act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies engaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain, and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

Government-aided railroad and telegraph lines must themselves maintain and operate.

SEC. 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies referred to in the first section of this act, said telegraph company so extending its lines shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line

Connecting telegraph lines.

Equal facilities
required.

of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies referred to in the first section of this act shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

Complaints to
Interstate Com-
merce Commis-
sion.

SEC. 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line, shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided*, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

Commission
may institute in-
quiries on its own
motion.

Duty of the At-
torney-General
under this act.

SEC. 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to

have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

SEC. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by or perform or carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Terri-

Penalties for failure to comply with the provisions of this act or the orders of the Interstate Commerce Commission.

Actions for damages may also be brought.

tory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

Duty of railroad and telegraph lines subject to this act to file copies of contracts and a report with the Commission.

SEC. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Annual reports to the Commission.

Penalties for refusal to make reports to Commission.

Duty of Attorney-General to prosecute.

SEC. 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Right of Congress to alter, amend, or repeal.

Equity rights of the Government preserved.

Public, No. 237, approved, August 7, 1888, first session Fiftieth Congress.

An act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, It shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions of trains or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers or employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith.

Monthly reports of railway accidents.

SEC. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Failure to make report within thirty days after end of any month a misdemeanor.

Penalty.

SEC. 3. That neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or action for damages growing out of any matter mentioned in said report.

Reports not to be used in evidence against the carrier.

Form of report. SEC. 4. That the Interstate Commerce Commission is authorized to prescribe for such common carriers a method and form for making the reports in the foregoing section provided.

Public, No. 171, approved, March 3, 1901, second session Fifty-sixth Congress.

An act to protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Contracts, combinations in form of trust or otherwise, or conspiracies, in restraint of trade or commerce among the States or with foreign nations illegal.

Penalty.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons engaging in monopolies guilty of misdemeanor.

Penalty.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Contracts, combinations in form of trust or otherwise, or conspiracies, in restraint of trade or commerce in or between Territories or between District of Columbia and Territories or between Territories or District of Columbia and States or foreign nations illegal.

Penalty.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprison-

ment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Courts may prevent and restrain violations.

Suits brought by United States district attorneys under direction of Attorney-General.

Temporary restraining orders.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Additional parties may be summoned.

Service of subpoenas.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Seizure and condemnation of property in course of transportation.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Persons injured may recover threefold damages and attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws

"Person" or "persons" defined.

of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Public, No. 190, approved July 2, 1890, first session Fifty-first Congress.

[Extract from the Wilson Tariff Act, second session Fifty-third Congress.]

Trusts, etc., in
restraint of im-
port trade
declared void.

Penalty.

Jurisdiction of
circuit courts.

Proceedings.

SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this Act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

SEC. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time

make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this Act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. Summoning additional parties.

SEC. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this Act, and being in the course of transportation from one State to another, or to or from a Territory, or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law. Forfeiture, etc., of property affected by trust.

SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this Act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee. Suits by parties injured. Damages.

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the house of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.] August 27, 1894. Public, No. 227, received by the President August 15, 1894, second session, Fifty-third Congress.

[Extract from the Dingley tariff act, first session Fifty-fifth Congress.]

* * * *And provided further,* That nothing in this Act shall be construed to repeal or in any manner affect the sections numbered seventy-three, seventy-four, seventy-five, seventy-six, and seventy-seven of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," which became Trusts, etc., in restraint of import trade void. Vol. 28, p. 570.

a law on the (twenty-eighth)^a day of August, eighteen hundred and ninety-four.

Public, No. 11, approved, July 24, 1897, first session Fifty-fifth Congress.

An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted.

Expedition of cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Hearing before three judges.

Review by Supreme Court on certificate.

Appeal to Supreme Court.

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree

^a The above date is incorrect. It should read August 27, 1894. See Supp. Rev. Stat., volume 2, pages 333, 334.

of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Exception.

Public, No. 82, approved, February 11, 1903, second session Fifty-seventh Congress.

[Extract from Department of Commerce and Labor act, second session Fifty-seventh Congress.]

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations, who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of five thousand dollars per annum. There shall also be in said bureau a deputy commissioner, who shall receive a salary of three thousand five hundred dollars per annum, and who shall, in the absence of the Commissioner, act as and perform the duties of the Commissioner of Corporations, and who shall perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said Commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

Bureau of Corporations.

Commissioner of Corporations.

Deputy Commissioner.

Employees.

The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company, or corporate combination engaged in the commerce among the several States and with foreign nations, excepting common carriers subject to "An act to regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

Commissioner to investigate corporations, joint stock companies and combinations, except common carriers, and gather information and data to enable the President to make recommendations to Congress.

In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies, and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to com-

Power of Commissioner of Corporations in respect to corporations and combinations same as that exercised by Interstate Commerce Commission in respect of common carriers, so far as applicable.

Immunity to
testifying wit-
nesses.

mor. carriers so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "Act to regulate commerce" and by "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

Compilation and publication
of information.

It shall also be the province and duty of said bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

Public, No. 87, approved February 14, 1903, second session Fifty-seventh Congress.

An act to further regulate commerce with foreign nations and among the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Carrier corpo-
ration as well as
officer or agent
liable to conviction for misde-
meanor.

Penalty.

Failure of car-
rier to publish
rates or observe
tariffs a misde-
meanor.

That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law,

shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall

Penalty.

Misdemeanor to offer, grant, give, solicit, accept, or receive any rebate from published rates or other concession or discrimination.

by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

Penalty.

Imprisonment penalty abolished.

Judicial district in which cases may be prosecuted.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory

Act of officer or agent to be also deemed act of carrier.

Rates filed or participated in by carrier shall as against such carrier be deemed legal rate.

thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Persons interested in matter involved in cases before Interstate Commerce Commission or circuit court may be made parties and shall be subject to orders or decrees.

SEC. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Proceedings to enjoin or restrain departures from published rates or any discrimination prohibited by law against carriers and parties interested in traffic.

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either

of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An Act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Such proceedings shall not prevent actions for recovery of damages or other action authorized by act to regulate commerce or amendments thereof.

Compulsory attendance and testimony of witnesses and production of books and papers.

Immunity to testifying witnesses.

Expediting act of Feb. 11, 1906, to apply in cases presented under direction of Attorney-General in name of Interstate Commerce Commission.

SEC. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

Conflicting laws repealed.

SEC. 5. That this Act shall take effect from its passage.

Public, No. 103, approved, February 19, 1903, second session Fifty-seventh Congress.

[Extract from legislative, executive, and judicial appropriation act, second session Fifty-seventh Congress.]

Appropriation
of Attorney-
General to en-
force interstate
commerce and
antitrust acts.

That for the enforcement of the provisions of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto, and of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all Acts amendatory thereof or supplemental thereto, and sections seventy-three, seventy-four, seventy-five, and seventy-six of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four, the sum of five hundred thousand dollars, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney-General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said Acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said Acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

Immunity to
testifying wit-
nesses.

Perjury ex-
cepted

Public, No. 115, approved, February 25, 1903, second session Fifty-seventh Congress.

[Extract from general deficiency act, second session Fifty-seventh Congress.]

That under, and to be paid from, the appropriation of five hundred thousand dollars for the enforcement of the provisions of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto, and other Acts mentioned in said appropriation, made in the legislative, executive, and judicial appropriation Act for the fiscal year nineteen hundred and four, the President is authorized to appoint, by and with the advice and consent of the Senate, an assistant to the Attorney-General with compensation at the rate of seven

Assistant to At-
torney-General.

thousand dollars per annum and an Assistant Attorney-General at a compensation at the rate of five thousand dollars per annum; and the Attorney-General is authorized to appoint and employ, without reference to the rules and regulations of the civil service, two confidential clerks at a compensation at the rate of one thousand six hundred dollars each per annum, to be paid from said appropriation. Said assistant to the Attorney-General and Assistant Attorney-General shall perform such duties as may be required of them by the Attorney-General.

Assistant Attorney-General.

Confidential clerks.

Public, No. 156, approved, March 3, 1903, second session Fifty-seventh Congress.

An act to promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall hereafter, by extreme daring, endanger their own lives in saving, or endeavoring to save, lives from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster, or grave accident, upon any railroad within the United States engaged in interstate commerce: *Provided,* That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

Bronze medals of honor for saving life in railway accidents.

SEC. 2. That the President of the United States be, and he is hereby, authorized to issue to any person to whom a medal of honor may be awarded under the provisions of this Act a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided,* That whenever a ribbon issued under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

Decorations to accompany medal.

Appropriations.

SEC. 3. That the appropriations for the enforcement and execution of the provisions of the Acts to promote the safety of employees and travelers upon railroads are hereby made available for carrying out the provisions of this Act.

Public, No. 98, approved, February 23, 1905, third session Fifty-eighth Congress.

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